United States Court of Appeals for the Second Circuit



APPENDIX

ORIGINAL WITH PROOF OF SERVICE 75-7134

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

CLIFFORD J. LEWIS, JR.,

Plaintiff-Appellant,

-against-

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., WILLIAM WIRTZ, as Trustees in Reorganization of the Properties of PENN CENTRAL TRANSPORTATION COMPANY, Debtor in Reorganization,

Defendants-Appellees.

APPENDIX



JURON and MINZNER, P.C. Attorneys for Plaintiff-Appellant 501 Fifth Avenue New York, New York 10017

ROBERT M. PEET
Attorney for Defendants-Appellees
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New York, New York 10017

PAGINATION AS IN ORIGINAL COPY

INDEX

		Page
Docket Entries		A-1
Excerpts from Transcript:		A-3
Plaintiff's Witnesses:		
Clifford Joseph Lewis	Direct	A-27
	Cross	A-47
	Redirect	A-67
Lawrence I. Kaplan	Direct	A-69
	Cross	A-75
Defendants' Witnesses:		
Frank Talbott	Direct	A-80
	Cross	A-91
David W. Halderman	Direct	A-104
	Voir Dire	A-108
	Cross	A-121
•	Redirect	A-133
		A-136
	Recross	A-134
Plaintiff's Exhibit:		
1 Photograph	In Evidence	A-45
	Reproduced	A-156
Defendants' Exhibits:		
A Application for Employment	In Evidence	A-48
	Reproduced	A-156
C Report of Health Examination	In Evidence	A-66
	Reproduced	A-157
H Personal Injury Report	In Evidence	A-88
	Reproduced	A-164
I Car Inspection Report	In Evidence	A-112
	Reproduced	A-165

INDEX

	Page
Memorandum and Order of Levet, D. J.	A-166
Judgment Appealed From	A-168
Notice of Appeal	A-169

DOCKET ENTRIES

CIVIL DOCKET

USITED STATES DISTRICT COURT

Jury demand date.

by Pltff. 5-20 -/1

71 CIV. 2339

CLIFFORD J. LIMITS JR.

AGALIST.

For plaintin:

JOSEPH C. MATERA JR.

501 Fifth Avenue, N.Y.C.N.Y. 10017

GEORGE P. BAKER, RICHARD C. BOND. JERVIS LANGDON JR. WILLIAM WIRTZ as TRUSTEES IN REORGANIZATION OF THE PROPERTIAS OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR IN REORGANIZATION. For defendant: ROBERT M. PEET (FOR ALL DEFTS") 466 Lexington Ave.

NYC 10017

STATISTICAL RECORD	CUSTS		DATE	RECEIPT NO.	RE	c.		DISB.
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71 CIV. 2339

DATE	PROCEEDINGS	Date Ord Judgment
%v26-71	Filed Compldint. Issued Surmons.	
Jul.14-71	Filed Summons with Marshal's ret. Served. Penn Central Transportati Co., by J.H. Shapiro on 5-27-71	on
2 71	Filed defts' ANSWER to complaint R	1P
y 20.72	Filed Dfts. Notice to take deposition of Pltff.	
Mars 20 75	Filed Pitff interrous to deft.	
Jan.4-73	Filed dotice of Lotion Ret. 1/15/73 at 10 AM re: strike answer.	
Jan.11-73	Filed Memorandum of Law.	
an.4-73	Filed Affidavit of Edward 5. Minzner.	
an.30-73	Filed MEMO. END. on motion papers filed 1/4/73. Motion granted to the extent	-
	defendant ordered to answer plaintiff's interrogatories by 2/9/73, or its answer will be stricken and judgment in default granted for plaintiff. So	
		1 .1
	ordered. Tenney, J. Filed Pltfis note of Issue & Statement of Readiness.	
	nia i de che anguero to pitific Interrogatories.	-
Neb 15-73	Filed Pltfs notice of motion, Re; Answer Interrogatories, ret before Tenney J.	1
100 17	3/5/73,	
b 15-73	Filed pltffs memo of law.	1
b 15-73	Filed Pitffs affidavit of service by Edward Minzer.	
y 3-73	Filed MEMO.END. on motion papers filed 2/15/73. Motion withdrawn. So ordered.	
	Tenney, J.	1
ec.3-73	Aution reassigned from Tenney, J. to Levet, J.	1
ov.30-73	PRE-CONFERENCE HELD BEFORE LEVET, J. Case to be tried in one unit-	+
	Liability and damages together.	1
an. 2-75	Before Levet, J. Jury trial begun.	
	Trial continued.	7 160
Jan. 7-75 Jan. 8-75	11 11	
Jan. 9-75	11 11	
10 7	t " concluded Tury verdict for delt.	
Jan. 27-7	5Filed Memorandum & order #41808. I am compelled & do deny the motion	n
	for a new trial as there was adequate proof to sustain the vertile	1 2
	At the time of oral motion I instructed the clerk to Withhold ent	1/2-
	of judgment. I now direct the clerk to enter judgment for deft-	1
	railroad together with costs. So ordered. Levet, J.	dn
Feb.3-75	Filed JUDGIE Ordered that all deft's, as trustees in Reorganizati of the properties of Penn Central Transportation Co., Debtor in	
	Reorganization, have judgment against the pltff. dismissing the	dtio
	with costs. to be taxed. Levet, J. Judgment Ent. Clerk. m/n Ent. 2-	4-75
2-18-75	Filed pltff.'s notice ofappeal from final judgment of 2/3/75.	
2-10-63	mailed conies	13
4-28-75	Filed transcript of record of proceedings, dated 1/2-6-7-8-9-10/15	1-
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EXCERPTS FROM TRANSCRIPT

1	ars
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	CLIFFORD J. LEWIS, JR.,
6	Plaintiff, :
7	vs. : 71 Civil 2339
8	GEORGE P. BAKER, RICHARD C. BOND, : JERVIS LANGDON, JR., WILLIAM :
9	WIRTZ, as trustees in Reorganiza- : tion of the Properties of Penn :
10	Central Transportation Company, : Debtor in Reorganization, :
11	Defendants. :
12	: x
13	Before:
14	HON. RICHARD H. LEVET, District Judge.
15	
16	New York, January 2, 1975; 10.00 o'clock a.m.
17	(Room 501)
18	
19	APPEARANCES:
20	JURON & MINZNER, Esqs., Attorneys for Plaintiff;
21	BY: ALBERT JURON, Esq., of Counsel.
22	ROBERT M. PEET, Esq., Attorney for Defendants;
23	BY: HENRY W. HERBERT, Esq., of Counsel.
24	

2	THE COURT: Mr. Juron, will you be good enough
3	to just state on the record, now very briefly what you
,	claim the liability basis is?

MR. JURON: We are basing our action mainly on the Federal Safety Appliance Act as well as FELA.

On October 26, 1969 the plaintiff, Clifford

Lewis, was employed as a car dropper in the Morrisville

Hump Yard, Morrisville, Pennsylvania. If I may explain

the function of a car dropper --

THE COURT: I understand, I guess.

MR. JURON: On this particular day or morning, about 2.45 in the morning, working as a car dropper, he was taking two cars down from the crest of a hump, down a slope to connect up with a number of cars at the bottom of the hump some distance beyond it.

It was his job to be released at the crest of the hump, freewheeling down the hump, using a mechanical brake to slow his two-car cut, as they say, down to a crawl.

THE COURT: How did that work, by hand?

MR. JURON: A vertical hand brake. He was standing at the rear of the first car of the two-car cut and he was released. He started to turn the wheel, being a vertical wheel, in a clockwise direction.

Ordinarily the brakes would slowly be applied and the cars would come to a crawl.

he tells us that this particular morning the brakes did not connect, they did not slow the cars down and the two cars that he was on going down the slope started to pick up speed with the gravity pull. Realizing that the brakes weren't holding, he was compelled to jump to save himself from still further injury.

THE COURT: Does he say he tried to operate the wheel?

MR. JURON: He tried to turn the wheel, turn it a number of times. Ordinarily the wheel after five or six revolutions would completely come to a stop.

In this particular case he says he turned the wheel exactly ten or eleven times, he felt no reaction, no braking of the car.

He was standing at the rear ladder of the first car. What he did was to move himself over to the side ladder, which is just around the corner of the rear of the rear of the rear of the car and he started to take a couple of steps down the ladder. He saw he was approaching some train that was ahead stationary and he jumped from the side ladder.

THE COURT: Where did he land?

MR. JURON: He landed on the side of the tracks, rolled over a few times. He received some injuries, he received some emergency treatment at the St. Francis Hospital in Trenton and he was o8u for a period of two weeks.

After that he had some difficulty with a left knee and eventually they had to remove part of his left kneecap.

It is our contention that as a result of this accident and the shock of this trauma he developed a very serious psychiatric condition.

Some five years before --

THE COURT: No previous history of that kind?

MR. JURON: Some five years before, in 1964,

he had a mental breakdown and he was confined and received treatment at the Trenton State Hospital for a period of six months, five or six menths.

He was discharged from that hospital in 1964, he received a few outpatient treatments but for a period of approximately five years he was without symptoms, without treatment.

He had no difficulties and was receiving no psychiatric treatment as far as we know for this interval of five years. He was a completely functional

A-8 ars man. It is our contention that the shock of this accident reactivated a probable susceptibility on his part. THE COURT: Is there any physical condition which remains? MR. JURON: Yes, the physical condition is the knee. THE COURT: No operations? MR. JURON: There was an operation in April

MR. JURON: There was an operation in April of 1970 for a partial removal of the left patella. There were some residual conditions. He received further treatment after the surgery and he had some residual pain and disability with respect to it.

MR. JURON: He worked intermittently, with infrequency, following this accident. He worked for a short period of time in 1970 and still shorter period in 1971 and it is his recollection that the last time he worked was some time in 1972. I am trying to establish the dates with Mr. Herbert. He has W-2 slips but they do not indicate the terminal date and his recollection is very poor so I would trust that Mr. Herbert's people will come up with the terminal date.

* * *

the proof will probably be or will not be.

First then for the plaintiff, Mr. Juron.

MR. JURON: May it please the Court, Mr. Herbert, ladies and gentlemen of the jury:

In this case I will be representing a young man, Clifford Lewis. He is suing his former employer, the Penn Central Railroad Company for something which happened some five years ago.

Mr. Lewis is presently 34 years of age. At the time of this happening he was 29 years of age.

Mr. Lewis was hired by the Penn Central
Railroad in April of 1969. Before that he had been a
member of the National Guard from 1960 to 1966, receiving
an honorable discharge. During the time that he was in
the National Guard, some time around 1964, he had suffered
a nervous breakdown and had been in the Trenton State
Hospital in New Jersey for a period of six months, during
the spring and summer of 1964.

He was discharged from the hospital and was an outpatient, went back one, two or three times for certain visits and was fully discharged some time during 1964 from any further treatment.

He didn't require any further treatment between 1964 and 1969, didn't see a psychiatrist or require any

-

medication.

In April of 1969 he applied for the position as freight brakeman with the railroad. Before that he held various jobs, a laborer for the United States Steel, other kinds of jobs. Then he was laid off because of cutbacks in employment.

He applied for this job and was required to take certain tests; took the tests and passed, and they sent him to a school to learn how to be a freight brakeman and included in the duty as freight brakeman for which he was trained was that of a car dropper.

A car dropper, I will explain what that is in a few moments.

He finished this training period of, I think, about one week and after that he was placed In various yards to do various jobs as freight brakeman and he had various jobs among one of the jobs is that of car dropper.

Now, the railroad no longer has a car dropper, they are discarded. They now have electronically controlled cars but at that time car droppers were used for this purpose.

In a railroad yard a train is made up in various ways and, at that time, a train was made up as follows:

This particular yard, as many of the yards, has

Yard, where Mr. Lewis was working the day of the accident, had been working for some time, they have slopes so a train is made up as follows:

At the bottom of the slope on the level portion below the hills you have various cars which are the beginning of the train and cars are added on to the train.

What happens is an engine with various cars in front of it is pushed up a hill so that the front car or two or three cars reaches the top of the hill, which is like a plateau, the crest of the hill.

The engine as 't is pushing up these cars has a number of cars in front of it as I say. On the first, second or third car, generally on the first car, there is freight brakeman called a car dropper. There are various types of brakes and various types of cars but this particular car, which is probably the most frequently used car, is a boxcar, an enclosed boxcar.

At each end of the boxcar there is a brake sheel which we will show to you. The brake in this particular case was vertical brake which is a wheel about 22 inches in diameter and vertical because it is up and down. The boxcar itself is about 22 feet high and about 60 feet long and I don't recall how wide, perhaps 15 or 10

feet wide.

The car dropper stands on a small platform in the open on the outside of the boxcar. He is standing on the outside of the boxcar, at the rear of the boxcar with the upper part of his body, above his chest looking over the top or the roof of the boxcar. He is standing up against a wheel which is the brake.

The engine pushes the cars up to the top of the hill, either takes one or two cars, sometimes three cars down the hill. This is how it was done. This was the practice at that time.

At a signal the first car or two cars or three cars that he has to take down is released from the other cars with a lever. At this point, the first car that he takes down is slightly over the top of the hill so you have the gravity pull. The brake is released.

Now, the brake that he uses is a mechanical brake. There are two braking systems. There is the pneymatic or air brake system used in a train when it is all set up, connected up and the locomotive controls it.

This operation is purely mechanical, a simple pure mechanical device.

As the car dropper takes the one or two cars down the hill, he is freewheeling down the hill. As he

goes down the hill it is his job to turn this wheel clockwise. As he turns the wheel clockwise the mechanical
brakes lock up against the wheels to slow the car down to a
crawl so that a couple of hundred feet beyond the top of the
hill it reaches the rear of the train being formed, just
about crawls up to it and they have an interlocking device
which locks in.

It is his job to see to it that the car or cars that he takes down are slowed down to a crawl so that when it locks in with the rear of the car, of the train being formed beyond, it doesn't crash into it.

That was their practice and, of course, this was done in the open, all hours of the day and night and all kinds of weather.

That was Mr. Lewis' job among his other jobs for a period of some six months and he took down hundreds of those cars.

Now, that brings us up to the date of the accident, which was October 26, 1969, some time around 2.30, 2.45 in the morning.

He reported to this particular place called the Morrisville Hump Yard, called a hump because of these slopes for forming the freight trains. He reported about 11 o'clock this evening and he worked taking down -- I don't

recall what he said, some 15 or perhaps 20 cars he took all told, one or two cars at a time. He had been taking these cars down from about 11 o'clock until 2.30, for a period of some three and a half hours no problem.

Around 2.30 in the morning he was asked, told, instructed, to take down what is called a two-car cut.

A two-car cut means two cars. He positioned himself at the rear of the first car of this two-car cut. The two cars were close together and before he was released, the two cars were connected to other cars as they were going up to the top of the hill.

on October 26, 1969, following the usual practice, he was on the rear of the first car on a little platform at the rear of the car next to the brake. To get there he climbed up a ladder at the rear of the car, the engine pushed up a number of cars to the top of this hill. He tested the brakes, the brakes appeared to be okay because at that time the car was at the top, it was level. It wasn't moving too much and wasn't going down the slope and it appeared to be okay.

The two cars were then released. The front car was slightly over the hill at this time so gravity started to propel it down the side of the hill. As he was going down the side of this hill, he started to apply

the brake, which is the usual practice, takes about five or six revolutions of the brake until it came to a stop.

As he started to apply the brake, the car was picking up speed instead of slowing down. He kept turning the brake with no success. As a matter of fact, instead of slowing down, with the gravity pull and the weight of the two cars, the two cars kept going on the slope even faster. He turned it more than five or six times and realized that the car had no brakes.

As he looked ahead of him there were a number of cars, which was the train ahead of him to which he was supposed to be connected, but at the rate he was going he realized that he was going too fast and realized there would be a crash, which there was eventually.

what he did practically was to step off the rear ladder of the car to a side ladder, started to go down the side ladder to get off this car. It was the accepted practice in extreme emergencies as this one, realized that he didn't have enough time to climb all the way down the ladder, which is about 10 or 12 rungs so to save himself he jumped moments before the two cars crashed into the train on the track ahead of him.

When he jumped he rolled over, he was hurt.

He was taken to St. Francis Hospital and they gave him some

emergency treatment for problems of his left knee. He stayed out of a bout a period of two weeks and returned to work.

He received medical attention for his knee until eventually when he realized that his knee wasn't clearing up, he had some surgery performed on the left knee and they removed part of the left kneecap some time in April, 1970.

Of course, this knee never was the same after that. They gave all kinds of treatment afterward and it never was the same.

But it is his contention and you will see that
was the least of his injuries. What happened following
this was that he developed a psychiatric condition which
prevented him from going back to his regular work.

I don't think he ever returned to the car dropper job but
attempted in the following month or two, two and a half
perhaps to return to work as a freight brakeman doing some
other kind of job. He wasn't able to do it because what
developed was a terrible horrible fear that prevented him,
and you will hear medical testimony, from not only going
back to work as a freight brakeman, but prevented him from
going to back to any kind of job.

You will have a chance to look at him. The man you will see on the stand and he will be put on the

7 8

stand, is not the same man that went to work October 26,

1969 because he is not the same man and not the same man

because of the knee condition but something more serious

and far more disabling than the left knee condition; some
thing that prevented him not only from working and perhaps

has just about destroyed the human being in him.

The man that you will see was not that man on October 26 and, for this reason, we are suing for what appears to be at first view a very substantial sum of money.

THE COURT: Don't mention the sum now, Counselor;

MR. JURON: We are asking for a very substantial sum of money and at the conclusion of the case with the Court's permission you will hear what we are suing for and at that time you will realize that this man, now 34 years of age, who has virtually very little to look forward to for the rest of his life, is entitled to every nickel of what we are suing for.

We are suing under two Federal statutes and we have permission of the Government to sue the railroad on those two statutes. You will see that the injuries, the disability that he suffers from at the present time and ever since the accident istifies an award of a very substantial sum we are suing for.

As far as I can see there is only one issue involved here and that issue is, is this man entitled to the amount that we are suing for or some lesser sum, because you will see at the conclusion of this case, no question of the responsibility and fault of the railroad, no question of the injury, no question of the disability and no question of the terrible, terrible permanent injury that he suffers from at the present time and will for the rest of his life.

Thank you very much.

THE COURT: Mr. Herbert.

MR. HERBERT: May it please the Court, Mr. Juron, members of the jury:

As you know, I am here representing the Penn
Central Railroad in this lawsuit and as you already have
concluded or know, that we are in this court under a
Federal statute which permits a railroad employee who is
injured in the course of his employment to bring a lawsuit
against his employer to recover damages for any injuries
he sustains if it is found that the railroad was negligent.

And also reference was made to a Federal statute which is known as the Safety Appliance Act, which specifies certain equipment which should be inspected regularly and operate properly.

Clifford Lewis was first employed by the rail-

road on April 25, 1969. He hired out as a freight brakeman. He performed most of his duties in the Trenton area. He comes from Trenton, he lived there all his life or most of his life.

There is in Morrisville, Pennsylvania, which is just over the border from Trenton inside Pennsylvania, a railroad classification yard and in the classification yard is where the railroad will classify cars according to their destination.

many tracks. The cars are usually brought in from a yard called C yard, up past A and it is an incline which goes up and you have your building right in front where these men will board these cars and what they are to do is to take these cars and ride them down, control them and brake them when they get into the track in which they are destined.

I think there are something like 40 tracks down there, you will start off with one track and hit a switch and bring you around from one track to another track and the tracks fan out and eventually the car will ome to the track it is intended to go on, either 142 or whatever it may be.

This is done by car droppers and as is indicated to you, a car dropper is a man who will climb up on the one

car or two cars or three cars, whatever it may be, and he will control the movement of those cars by the brakes.

On this occasion Mr. Lewis cold us that on the night in question he was going to take a two-car cut, that means there were two cars, one coupled to the other.

In order to control the cars it is necessary for the brakeman to climb up a side ladder but in this instance it was on the rear side, there are two ladders, a side ladder and there is end ladder. He climbed up a side ladder and swung across to what is called the brake platform and they stand on the brake platform where they have a wheel.

The wheel has a chain which goes on down to a rod which in turn goes down to a chain which goes under the car and when you turn the wheel, you have to wind the brakes with the wheel and when you pull the chain up by winding the brakes, the brakes on the wheel of the car are applies and that is through some mechanism called the brake shoe which presses in against the round wheel, it is a friction brake.

Ear, wheel, and there were eight wheels on the car, have brakes applied to them.

Also, before the car is released, the brakeman gets up the ladder, swings to the brake platform and he

tightens the brakes to make sure the brakes are all right.

They are required to test the brakes. In this particular case he did just that.

He climbed up the ladder, he wound the brakes tight and the engine behind pushed and the wheels in this car didn't mvoe, in fact they screeched along the tracks because of the force of the engine behind pushing against these cars. He said, "Okay, the brakes are all right, you can release me."

Now, this was a two-car cut. Mr. Lewis was at the rear end a bit to the left of center onthe brake......

platform. He releases the brakes, he told the man on the ground, "Okay, release me" and they uncoupled with the cars behind him, because it was two cars, they uncoupled the rear of the cars behind him from the remaining portion of the train and that is what they call a gravity track.

In other words, it is on an incline and when you release the pin which holds the cars together, two cars of that release not being held by the engine starts to roll down the incline.

On this occasion Mr. Lewis told us that the brakes did not work and that he jumped off, he bailed out.

The car after this accident was inspected, as we are required to do, and the inspection showed the brakes

on this car worked fine. The accident is not witnessed.

No one saw this accident. Mr. Lewis the one who knows

exactly what happened up there.

After the accident he says the brakes didn't work, that is why I jumped. Although he does admit that the brakes worked moments before, an inspection made after showed the brakes operated fine, efficiently.

When he jumped, and I feel that you will conclude with me that the young man panicked, when he jumped, he jumped from quite a height because he told us that he swung around from the brake platform to the end ladder, the end ladder to the side ladder, went down one rung I think and then jumped, he believed, about 15 feet, landed on his feet and rolled over a couple of times and he sustained an injury, he said, to the left knee.

He was taken to a hospital for examination that evening. I believe it was the following day that x-rays were taken of the knee. He was out of work for, I think, five or ten days -- I don't recall now -- and then resumed his duties.

The diagnosis up to that time as far as I know was that he had a bipartite patella. What the devil does that mean? It means the kneecap, he was born with a kneecap that is in two parts and that is what the x-rays

showed.

Now, shortly thereafter he says he was having trouble with the knee and he came under the care of a Dr. Murray Burton. I assume he was referred to Dr. Burton by Mr. Juron.

Dr. Burton concluded that he had a fracture of the kneecap, put him in the hospital for an operation, for a supposed fracture of the kneecap and, lo and behold, when he gets in the hospital the doctor finally agrees he dodsn't have a fracture of the patella, he does he have a bipartite patella, which is congenital, existed long before. So he performs an operation for a repair of that.

Now, the case went along in that posture for some while. So far as I knew the only injury we were dealing with was an injury to the knee, he fell and banged his knee, until some time in 1973 - this accident happened on October 26, 1969.

plaintiff was first employed by the railroad on April 25, 1969. He only worked for us for about six months. He was a young man, a diligent employee.

Although with respect to the knee I know he told me that he had complaints about the knee but we will get into that with the medical testimony.

Then in January of 1973 I received from

plaintiff's counsel a report from a psychiatrist and I read over this report and learned that they are claiming that we aggravated some pre-existing condition, mental condition. I thought to myself "What are you talking about here?" At that time I, and I think I can speak for the railroad, learned for the first time that this man had had prior psychiatric problems for which he had been required to be hospitalized back in 1964 and I think remained under care of the hospital until some time in Early 1965.

Enever told the railroad about any prior psychiatric mental problems and when he was hired by the railroad, six months before this accident, he was asked whether he ever had any problems, whether he was nervous or restless, ever institutionalized, whether he had been under the care of any doctor in the last five years and his answer was no. He completely his this knowledge from the railroad, anything about a mental breakdown in 1964 or 1965, whenever it was.

He was given a physical examination, yes, and he was a healthy young man. He was not given any mental examination, but he did not tell us anything about any mental problem before and he now is coming into court and saying even though I didn't tell youthe truth about my prior psychiatric condition, I am holding you responsible

for aggravating it.

Now, we are going to try the case together and I feel it will be important for you to weigh not only the evidence of the witnesses and presumably the plaintiff, Mr. Lewis, but one of the issues will be was there anything wrong with that brake?

Plaintiff, of course, says there was. The railroad denies there was anything wrong with this brake and it is our position that it worked fine moments before this accident, it was found to be operating fine when we tested it after the accident. The issue is did it work fine at the time of the accident? That is the critical issue or is the plaintiff perhaps telling us that the brake didn't work just to try to pin the railroad for this accident?

Also with respect to the medical testimony of this man, and I dispute what plaintiff's counsel says that he is employable - I do not dispute that he is not employable as a freight brakeman, that I concede, he is not employable as a freight brakeman now.

I would also ask you to consider whether he was employable as a freight brakeman even before had he been honest, truthful and candid with us and given the railroad a fair chance to check more fully into a mental condition

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which he acknowledges he hid from us.

Those are the issues in this case and I will have an opportunity when the evidence is all in to come back and address you on the questions as to what I feel the evidence shows on these issues. But I would ask you to wait until all the evidence is in before you start to draw any conclusions.

Thank you very much.

THE COURT: Call your first witness.

MR. JURON: Clifford Lewis.

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CLIFFORD JOSEPH LEWIS, called as..

a witness in his own behalf, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. JURON:

- Q Mr. Lewis, you are the plaintiff in this action and suing the Penn Central Railroad, is that correct?
 - A That is true.
 - Q Were you employed by the railroad in 1969?
 - A Yes, I was.
 - THE COURT: Speak up, can't you?
- A Yes, I was.
 - Q What was the date that you first started working

Lewis-direct

1	ars	Lewis-direct 28
2	for the	railroad?
3	A	Let's see, April 28, 1969.
4	Q	How old were you at that time?
5	A	I was 29 years old.
6	ς.	Presently you are 34 years of age?
7	A	Yes, I am.
8	0	Prior to April of 1969, did you work?
9	A	Yes.
10	0	Work at various jobs?
11	A	Yes.
12	Q	Were you in the National Guard?
13	A	Yes.
14	Q	When did you first join the National Guard?
15	А	January, I think January.
16	C	1960?
17	A	January 1960.
18	(Were you on active duty with the Army for six
19	months?	
20		Yes, I was.
21	(Following that did there come a time that you
22	were di	ischarged from the National Guard and Army?
23	1	Yes.
24		THE COURT: When were you discharged?
25	(Do you recall what year that was?

1	ars	Lewis-direct 29
2	Α	It was January, 1966.
3	Q	When you joined the employment of the railroad
4	in April of	1969, did you receive any training or schooling?
5	Α	Yes.
6	Q	For what job did you receive training and
7	schooling?	
8	λ	I went to school for freight brakeman.
9		THE COURT: Will you please try to speak up more
10	so everybod	y can hear you?
11		You said you were trained for what?
12	Α	Freight brakeman.
13	Q	Was that a special classroom they sent you to?
14	Α	Yes.
15	Q	How long did you attend these classes?
16	A	A week.
17		THE COURT: A week?
18		THE WITNESS: Yes, sir.
19	Q	After that did you receive additional instruc-
20	tions in so	me freight yard?
21	A	Sort of like on the job training.
22		THE COURT: Just answer the questions which
23	counsel ask	s you.
24	Λ	Yes.
25	Č	Did you qualify for the job as freight brakeman?

1	ars	Lewis-direct	30
2	A	Yes.	
3	ç	Did your job as freight brakeman for which	you
4	qualified q	ualify you to work as a car dropper?	
5	λ	Yes.	
6	Q	How long did you work as a car dropper afte	r
7	April 197	What period of time did you work as a ca	r
8	dropper?		
9		THE COURT: From When to when?	
10	A	From April 1969 to October 1969.	
11	Q	Did you have an accident in October of 1969	?
12	A	Yes.	,
13	0	Now, can you tell the Court and jury what y	our
14	job was as	a car dropper during that time?	
15	A	Control the cars so you don't crash into ot	her
16	cars.		
-17	Q	You worked around the freight yard?	
18	Λ	Yes.	
19	Q	By cars do you mean boxcars?	
22	A	Boxcars.	
21 .	Q	Did you work at the Morrisville Yard during	, this
22	time?		
23	A	Yes.	
24	Q	Are you familiar with the Morrisville Yard?	?
25	A	Yes, I was.	

Between April and October of 1969, can you give Q us some idea as to how many cars you assembled as a car 3 dropper in the Morrisville Yard or some other yard? 4 I had the job as car dropper --5 THE COURT: He is asking you something else. 6 How many cars would you say you assembled in Q 7 8 your time? 9 A In six months? In the course of six months all told? 10 Q A How many cars I assembled right down? 11 How many cars did you ride down the slope in 12 1969? 13 A lot of them. 14 A THE COURT: That is meaningless. 15 THE WITNESS: I had the job two or three times 16 a week. 17 How many cars did you take down as a car dropper? Q 18 Say over a couple of hundred. A 19 Now, you went to work on October 25, 1969 about 20 ll o'clock in the evening, is that right? 21 A Yes. 22 A clear evening? 23 0 Yes. A 24 That was at the Morrisville Hump Yard? 25

1	ars	Lewis-direct	32
2	Α-	Yes. with the second se	
3	nu : .0. : .:	"Did you report to your boss at that time?	
4	ν.	Yes."	
5	Q	Did he tell you what your duties were for the	nis
6	evening?		
7	A	Yes.	
8	Q	What did he tell you?	
9	Λ	I just report to him.	
10		THE COURT: Just tell us what he said to yo	u?
11	A	I told him, I said to him I was a car dropp	er.
12		He said, "I'll put you on the list."	
13	Q	You were placed on a list?	
14	A	Yes.	
15	Q	Between 11 o'clock, October 25, 1969 up unt	til
16	2.30 the f	ollowing morning, about three and a half hour	rs
17	later, now	October 26, did you take any cars down in the	ne
18	Morrisvill	e Hump Yard?	
19	A	Yes.	
20	Q	About how many cars did you take down betw	een
21	11 o'clock	and 2.30 the following morning?	
22	A	Say between 10 and 15.	
23	Q	Did you have any problem up until 2.30?	
24	Λ '	No.	
25	Q	Now, I want to direct your attention to Oc	tober

1 1	ars Lewis-direct
2	26, 1969, about 2.30 or 2.45 in the morning and you are
3	the Morrisville Hump Yard, right?
4	A Yes.
5	Q Can you tell us what happened?
6	A Well, it was my turn to ride. You do it by
7	turns.
8	THE COURT: Just tell us what you did?
9	A I went out to my turn, there was two boxcars
10	and I got on the first boxcar, climbed up and got on the
11	platform, the first boxcar, the back of the first on the
12	left-hand side.
13	I applied the brakes, I threw the ratchet over
14	to the left and applied the brakes, winding it clockwise.
15	I looked down, the chain came up, the slack came
16	up and the chain went up, it rolled on.
17	Q What did that mean to you?
18	A It means there was brakes winding up.
19	Q At that time where was the car?
20	A There were two cars, the cars was ready at the
21	top of the hill. The other car behind it was sort of
22	coming down on the grade a little bit.
23	THE COURT: Were you on the first or second car:
24	THE WITNESS: I was on the back of the first

car.

	A-34
1	ars Lewis-direct 34
2	Q what happened after that?
3	A Well, I wound the brakes up and
4	THE COURT: Go slow but speak up so we can all
5	hear you.
6	A I applied the brakes, wind the brakes up clock-
7	wise and you hear this ratchet sound like click-click and
8	the chain is coming up and the brakes are catching. It
9	comes up and the engine in back of me pushed the cars up.
10	So he is pushing maybe 15, 20 boxcars and the engine back
11	there, maybe two engines I think it could have been a
12	big engine pushing them up and coming together, like.
13	I always look down before I go off because you
14	are crazy to go off until you check it out.
15	THE COURT: What did you do?
16	THE WITNESS: I looked.
17	THE COURT: Where did you look?
18	THE WITNESS: Down at the knuckles of the boxcar
19	behind me, the boxcar I was on, the knuckles came together.
20	Q The coupling device?
21	A Came together and I heard some screeching of
22	the wheels so I knew the brake was on there.
23	THE COURT: Don't say that.

Top of the hill.

24

25

At this point you were at the top of the hill?

Le	wi	3	-d	i	r	e	C	t	

•	dis
2	Q What happened after that?
3	A The cars came together and I knew I had the
4	brakes so I told the guy down on the ground to release me.
5	THE COURT: I don't understand what you are
6	saying. What did you do?
7	THE WITNESS: After I had the brakes wound on
8	real tight and seeing the knuckles come together, I kicked
9	the chain a couple of times to see if it is real firm.
10	THE COURT: Speak up.
11	Q The man releases you by a lever device?
12	A Yes.
13	Q What did he do?
14	A He asked me "Are you all right?"
15	I say, "Yes, I am okay."
16	THE COURT: Who asked?
17	THE WITNESS: The man that pulled the cutting
18	lever that cuts you loose from the train. Your two cars
19	loose.
20	Q The two cars are released from the rest of the
21	train?
22	A That is right.
23	Q Did you have any idea that the brake was not
24	working?
25	A No.
20	

	a	r	S

Lewis-direct

1	ars Lewis-direct
2	Q At the time that you were at the top of the
3	hill, did you believe you had brakes on at that time?
4	A Yes, I did.
5	Q After the man released the lever what happened
6	to the two cars?
7	A They began rolling right away because I took the
8	ratchet.
9	Q At that time when the two cars started to roll
10	down the hill, what did you do at that time as soon as it
11	went over the top of the hill?
12	A Released the brake lever.
13	Q What was the purpose of releasing the brake at
14	that time?
15	A So I can roll, start going.
16	Now, immediately after you released the brake
17	lever, what did you do after that, immediately after that?
18	A I started, went down the second he pulled the
19	cutting lever.
20	Q What was the purpose of turning the wheel clock-
21	wise?
22	A To put the brake on.
23	Q At that time
24	A Wind the chain up like that.
25	Q Were you standing on the rear of the first car?

What did you do?

didn't -- didn't seem like I slowed up at all.

A

23

24

25

I turned and turned it and it seemed like it

1	ars Lewis-direct 38
2	A I was picking up speed.
3	Q For what distance did you travel along that way
4	from the top of the hill?
5	A To the bottom.
6	Q Yes, did you reach the bottom of the hill?
7	A Yes.
8	Q What happened?
9	A I continued to turn the wheel.
10	Q Did the car slow down?
11	A No.
12	Q What did you do after that?
	A I started thinking about I don't think this car
13	
14	is going to stop.
15	THE COURT: Never mind what you thought.
16	Q Was the car going fast or was it slower than
17	when you left the top of the hill?
18	A A lot faster by the time I reached the bottom.
19	Q What did you do then?
20	A I started thinking about I started to get
21	off, to make my way from the platform I was on because I
22	had the car behind me and wanted to make my way through the
23	outside of it, get around on the end of the boxcar.
24	Did you move from the back of the boxcar and

work your vay to the side ladder?

1	ars Lewis-direct 39
2	A I checked the brake and curned it, nothing
3	happened, so I left the brake and the first thing went
4	through my mind, I got to get off these two cars.
5	Q You left the platform and went to the side
6	ladder?
7	A Holding on, worked my way over to the side ladder
8	Q Did you get on the side ladder?
9	A Yes.
10	Q Did you start to go down the side ladder?
11	A Yes.
12	Q How many rungs did you go down?
13	A Maybe two or three, three or four maybe two
14	or three.
15	Q What happened then?
16	A I started making a turn, turning because the
17	conductor told me I was going on one of the tracks, one and
18	two and at that time in my mind it wasn't the one he told
19	me I was going on.
20	THE COURT: I don't understand what you said.
21	What did you start to do?
22	Q When you started going down the side ladder you
23	went down a few rungs?
24	A Yes.
25	Q After that what did you do?

Lewis-direct.

1	ars	Lewis-direct. 40
2	. A	I had to jump off.
3		Did you ever receive instructions what to do
4	in case the	brakes would not hold on car?
5		THE COURT: Yes or no.
6	A	I don't think so.
7	Q	Did you ever hear the word Mr. Herbert used
8		MR. HERBERT: Let him answer the question.
9		THE COURT: Yes.
10	Q	What was the answer, did you ever receive any
11	instructions	s
12		MR. JURON: I withdraw the question.
13	Q	Mr. Herbert in the opening you weren't
14	present.	
15		THE COURT: Never mind what he used.
16	Q	Did he call it bail out?
17	A	Yes, yes.
18	Q	What is bail out?
19	A	A couple of times, we went to school, the guy
20	did mention	sort of bail out, maybe not in a direct way.
21	Q	What did you understand bail out to mean?
22	λ	This means get off the two boxcars you are on:
23	Q	How?
24	A	Any way you can, jump, leap, any way.
25	Q	Were you ever told by the conductor or any

1	ars Lewis-direct 41
2	instructor if the brakes don't hold you should jump and
3	bail out?
4	A Lots of conductors told me, watch out for your
5	life.
6	MR. HERBERT: I object to that, your HCnor.
7	THE COURT: Yes.
8	Do you want it stricken?
9	MR. HERBERT: Yes, and an instruction to the
10	jurors to disregard the answer.
11	THE COURT: Yes, strike it out and the jury wil
12	disregard the later statements.
13	Q After you bailed out or jumped off this car
14	that the brakes weren't holding on, where did you land?
15	A On the ground.
16	Q What happened to you when you landed on the
17	ground?
18	A I went down on my legs, on my knees and rolled
19	over; hit pretty hard and rolled over five or six good
20	times.
21	Q Were you conscious or unconscious?
22	A I was unconscious, semi-conscious.
23	Q Anyone come to give you any help after that?

Did you go some place after that, after you

No.

2 came to? 3 A I came to but I just stood there. I 4 I was getting up in a crouch and just came to.	just
I was getting up in a crouch and just came to.	just
5 Q Where?	
A In a crouch, lying down first. I w	as first
knocked out maybe 10 or 15 seconds, 20 seconds, s	omething
8 like that; it could have been 25 seconds, in that	t category.
9 Q When you came to your full senses did	you know
10 where you were?	
I knew where I was but I was dazed.	
12 Q Were you cut or bleeding?	
13 A Yes, I was cut and bleeding.	
14 Q What part of your body?	
A My left leg was cut and bleeding and	scraped
16 and everything and I had sore my head was hurt	ing and
17 the back was bothering me. I rolled over, I fe	elt a few
18 bumps and abrasions.	
19 Q Were you taken to St. Francis Hospita	al after
20 that?	
21 A Yes.	
Q Did you receive treatment there?	
23 A Yes.	
24 Q Took x-rays?	
25 A Yes. The x-ray room was closed at	that hour.

1	ars	Lewis-direct 54
2	to him, that	is part of the psychiatric treatment. I think
3	the objection	on is ill.taken
4		MR. HEREERT: Is Dr. Rubin going to be called,
5	Mr. Juron?	
6		MR. JURON: I don't know but to my mind whether
7	he is or not	t the patient, the plaintiff, is entitled to
8	testify as	to what treatment he received.
9		MR. HERBERT: I have no objection to the treat-
10	ment he rece	eived.
11	0	Can you tell us what Dr. Rubin did for you when
12	you saw him?	
13		THE COURT: If anything.
14	Q	If anything?
15	A	He prescribed medication to calm my nerves.
16	Q	Was this the first time you started taking this
17	medication?	
18	Α	Yes.
19	Q	Did you take any medication for the five years
20	before 1969	at all?
21	Α	No, I didn't.
22	Q	No medication at all?
23	A	No.
24	Q	Did you see any psychiatrist for five years before

1969?

:	ars	Lewis-direct 55
2	, A .	No.
3	Q	Did you have any fears before October 26, 1969?
4	A	No, I wasn't afraid of anything, I guess.
5	Q	Did you do your job regularly between April 1969
6	and October	1969?
7	A	Yes.
8	Q	Anyone ever tell you, "Mr. Lewis, you are not
9	doing your	job right"?
10	A	No.
11	Q	When did you stop working completely, doing any
12	kind of wor	k?
13	A	I think it was in 1972 no
14		THE COURT: When in 1972?
15		THE WITNESS: I don't remember.
16	Q	Were you seen by Dr. Ursino?
17	A	Yes.
18	Q	What kind of doctor is he?
19	A	He is a nice doctor.
20		THE COURT: There is no particular category of
21	nice doctor	
22	Q	Did your mother go with you to see Dr. Ursino?
23	A	No.
24	Q	Do you know what kind of doctor he is, a
25	specialist?	

1	ars Lewis-direct 58
2	freight brakeman again.
3	Q Now, are you able to do the freight brakeman's
4	work today?
5	A I think I am, yes.
6	Q Are you able to go between cars today?
7	A Yes, I think so.
8	Q Are you able to take a cut of cars down a slope
9	today as a car dropper?
10	A I don't know. I would be a little scared.
11	I don't know about car dropping. Brakeman is a dangerous
12	job. I think I could do
13	MR. HERBERT: I move to strike it out.
14	THE COURT: Disregard it. Disregard that
15	characterization.
16	Q I want to show you this picture and ask you if
17	this is a fair representation of what the brakes of a car
18	looked like that you were on on October 26, 1969.
19	THE COURT: Mark it.
20	(Plaintiff's Exhibit 1 was marked for
21	identification.)
22	A Yes, that is exactly like the one I was on.
23	MR. JURON: I offer this in evidence.

xx

24

25

MR. HERBERT: No objection.

(Plaintiff's Exhibit 1 for identification was

* * *

Every day?

Yes.

24

1	ars	Lewis-cross
2	Philadelphia	a?
3	A	That is right.
4	Q	You took a course and completed the course?
5	А	Yes.
6	Q	Did you work for any barber after that?
7	Α	Yes, I did.
8	Q	Who did You work for and how long did you work
9	for them?	
10	A	I don't remember exactly how long I worked in
11	every spot.	
12	Q	What was your reason for leaving, not pursuing
13	barbering?	
14	Α	I didn't make no money at it. I wasn't any
15	good at it	
16	Q	You weren't any good at it?
17	Λ	No.
18	Q	Did you work at the Continental Barber Shop?
19	A	Yes, in Princeton.
20	Q	From September 1967 to April 1969?
21	Α	I am not sure now. I can't have time to think.
22	Q	Do you remember when you hired out with the
23	railroad y	ou filled out an employment application?
24	A	Yes.

MR. HERBERT: May I have this marked for iden-

XX

1	ars Lewis-cross 67
2	ification, please.
3	THE COURT: Mark ir.
4	(Defendants' Exhibit A was marked for
5	identification.)
6	Q I ask you to look at Defendants' Exhibit A
7	for identification. Tell me whether you recognize that
8	as being the application that you filled out when you hired
9	out with the railroad.
10	A Yes, it is the application I filled out.
11	THE COURT: Is your signature on it?
12	THE WITNESS: Yes.
13	THE COURT: All right, offer it.
14	MR. JURON: May I have a moment, your Honor?
15	THE WITNESS: Could I say one thing?
16	THE COURT: No, you have to answer questions
17	when they are asked.
18	THE WITNESS: All right.
19	MR. JURON: No objection.
20	THE COURT: Received in evidence.
21	(Defendants' Exhibit A for identification
22	was received in evidence.)
23	THE COURT: This appears to be signed by Mr.
24	Lewis on April 24, 1969, I believe.
25	You may pass it to the jury if you like.

2	AFTERNOON SESSION
3	(2.00 p.m.)
4	CLIFFORD JOSEPH LEWIS, resumed.
5	CROSS EXAMINATION (Continued)
6	BY MR. HERBERT:
7	MR. HERBERT: Your Honor, Mr. Juron and I have
8	gotten together on the last question asked and answered and
9	it is stipulated there were no witnesses to this accident.
0	THE COURT: Very well.
1	In other words, members of the jury, both sides
2	agree that there were no witnesses to the accident in ques-
13	tion.
14	Q Going back for a moment, Mr. Lewis, you told
15	us you did barbering work for a period of time?
16	A Yes.
17	Q Your reason for leaving barbering was to get a
18	job with the railroad as it paid a little better?
19	A And I was not that good at barbering:
20	Q You felt that you were not a competent barber?
21	A I knew I wasn't that good at it.
22	THE COURT: You were very convinced?
23	THE WITNESS: Yes.
24	Q Now

* * *

THE WITNESS: Just as convinced that the boxcar

76 Lewis-cross 1 ars Depending upon their destination? 0 What they had in them; yes. 3 Now, going now to the time of your accident and 4 just before your accident, when it came your turn you were 5 to take these two cars down and ride them into whatever track they were going in on? That is right. In order to do that was it necessary for you to 9 climb the side ladder of the car? 10 Yes, that is true. 11 There are two ladders on the car at that end, is 12 13 that correct? Yes, that is true. 14 A One is what is called the side ladder? 0 15 Yes. 16 A And if this table were the length of the car, 17 the side ladder would be back on the left-hand side? 18 That is right. A 19 And the end ladder would be on this side of the 20 car, indicating on the back of the car? 21 Yes, that is right. 22 A That has a brake platform but that is up higher? 23 Q 24

Yes, that is right.

25

So you climbed the side ladder of the car and 0



Le	wi	s-	C	r	0	S	S
----	----	----	---	---	---	---	---

1	ars Lewis-cross
2	I stepped on the thing going across like.
3	THE COURT: I don't understand.
4	Q I don't understand that. But that is not
5	that important.
6	A You step on the drawbridge to get across, like
7	a drawbridge and rails like you step on and go across.
8	Q In order for you, Mr. Lewis
9	A I had to cross them.
10	THE COURT: Wait until he questions you.
11	Q In order for you to get on the brake platform
12	of car No. 1, you had to climb up a ladder?
13	A Yes.
14	Q You climbed up a ladder and you got on the brake
15	platform of car No. 1, is that right?
16	A Yes, that's true.
17	Now, in the direction in which the cars were
18	going, the brake platform was at the rear end of the car?
19	A Yes.
20	Q A bit to the left of center?
21	A Yes, I know, I was there.
22	Q I know that, Mr. Lewis. I know you were there.
23	Now, when you got up on the brake platform you
24	did test the hand brakes, is that right?
25	A Right.

13

Lewis-cross

1	ars	Lewis-cross	79
2		THE COURT: Was this on the No. 1 car?	
3		THE WITNESS: On the Mo. 1 car.	
4	Q	The car you were riding down?	
5	A	That's right.	
6	Q	In testing the brakes you wou the brake	s on
7	tight?		
8	A	Yes.	
9	Q	And the engine which I think you told us	was
10	some 15 or	20 cars back	
11	A	About five, ten, fifteen boxcars were in	back
12	and the er	ngine pushing them up.	
13	Q	And when you applied the brakes on this o	ar, the
14	brakes wer	re on, isn't that right?	
15	A	That's right.	
16	Q	And in fact the wheel were screeching on	the
17	tracks bed	cause of their being pushed?	
18	A	Yes.	
19	Q	They were not turning but sliding?	
20	A	Sliding a little bit.	
21	Q	But at any rate having tested the brakes	, you
22	knew you	had brakes on that car before you went down	?
23	A	Because I looked down to see the second l	ooxcar
24	and it wa	s behind me, the one I was coupled to and the	ne
25	knuckles	came together. If one boxcar is station	ary

Q

25

And when you turn that wheel you turned it

1	ars Lewis-cross 81
2	clockwise to tighten the brakes?
3	A That's right.
4	. Q As you turn that wheel the chain, is there a
5	chain that comes up and wraps around that wheel?
6	A I don't see any chain wrapping against the wheel,
7	just when you turn the brake wheel the chain comes up.
8	Q Well, on this particular car, this was a boxcar,
9	was it not?
10	Λ Yes, it was a boxcar.
11	Q And up near the brake wheel and coming from
12	inside the brake wheel, is there a chain which hangs down?
13	A Yes, a chain comes down.
14	And that chain is attached to a long rod, is that
15	right?
16	A That is true.
17	Q And this long rod then at the bottom is attached
18	to another chain underneath the car?
19	A That's right.
20	Q And as you wind the brakes up that lifts the
21	chain?
22	A That's right.
23	Q And it pulls the brake shoes against the wheels?
24	A Yes.
-	

THE COURT: This wheel is upright, is it not?

Lewis-cross

1	ars	Lewis-cross 02
2		THE WITNESS: It is like it is not flat.
3		THE COURT: It is upright, this way (indicating)?
4		THE WITNESS: Yes.
5	Q	In other words, you turn the wheel in front,
6	you turn it	this way rather than this way (indicating)?
7	A	Yes, that way rather, clockwise.
8	Q	And this particular car had a brake release
.9	lever?	
10	A	Right.
11	Q	You tested the brakes and found found it worked
12	fine, is th	at right?
13	A	Yes.
14	Q	Then you would release the brakes before you
15	let go?	
16	A	You have to because you won't go down unless
17	you do.	
18	Q	Because the brakes are holding it?
19	A	Right.
20	Q	In order to release the brakes you throw a
21	brake relea	se lever?
22	y A	Yes.
23	Q	That just drops the chain and the wheel spins
24	the other w	ay, counterclockwise?
25	À	Yes, on some of them.

1	ars Lewis-cross 83
2	Q This one?
3	A This one, the wheels spin as far as, you know,
4	brakes, but I don't remember now exactly if it did spin bac
5	but the chain did snap and when I got the lever and threw
6	it from left to right, just go like that and you snap it
7	back again into the lime position and wind it on again,
8	the second that guy releases you from the rest of the train
9	you second you leave the top of the hill.
10	Q But at any rate you made this test, you knew
11	you had brakes on that car?
12	A Yes.
13	Q Now, then, there is a man down below, is there
14	not?
15	A Yes.
16	Q And did you call down to that man "Okay"?
17	A "Let me go." He walked up
18	THE COURT: Wait, read the question.
19	Won't you listen to the question and see if yo
20	can answer the question.
21	(Question read.)
22	A He asked me "Are you all right?"
23	I said, "Yes, I am all right."
24	Q You made the test?

Yes.

	A-57
1	ars Lewis-cross 84
2	Q You said, "Release me"?
3	A Yes. But he had to go back and pull the
4	cutting lever. There is two boxcars, he had to go back
5	to the second boxcar behind me and pull a lever.
6	Q At any rate you said, "Okay, release me" and
7	then he went back to cut the cars?
8	A Yes.
9	Q Now, you were riding car No. 1?
10	A Yes.
11	Q Taking two cars down?
12	A That's right.
13	Q So that he went back and he uncoupled car No. 2
14	from car No. 3, is that right?
15	A That is right, pulled the cutting lever.
16	Q This is a gravity track, is it not?
17	A It is a hill, yes.
18	Q It is an incline?
19	A Yes, that's right.
20	Q When you are uncoupled from car No. 3, car No. 2
21	and I started to roll down the gravity track, is that right?
22	A Yes, but no tuntil I threw the release lever.
23	THE COURT: Don't throw anything else, you
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THE WITNESS: I am being pushed by the train

confuse us.

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7.7	ith	tho	boxcars	on.

- Q But you had to release the brakes on your car before you started to roll down the tracks?
- A Yes.
- Q Once you released the brakes you started to roll down the track?
 - . A Yes.
 - Q This incline, the length of the incline, was about six car lengths long, is that right?
- A I am not sure. Six, I would say six to ten, six to eight.
 - Sis to eight car lengths long?
 - A I don't want you to put words in my mouth.

 I think it was maybe eight, six to eight, maybe nine car
 lengths long.
 - O And the track levels out?
- 18 A No, it doesn't.
 - Q Well, when I said to you the length of the incline was about six to eight car lengths --
 - A It could be nine. I never measured it.
 - The track levels out, isn't that what you told me when I was in your lawyer's office and I asked you all about these --
 - MR. JURON: Objection, your Honor.



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THE COURT: Are you saying then you don't know into which track, 1 or 2, the cars went?

report.

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1	ars Lewis-cross
2	THE WITNESS: It may have been 1 or 2. I am
3	not really sure.
4	THE COURT: It was one or the other, wasn't it;
5	THE WITNESS: It had to be one or the other, yes
6	I was just thinking about my life.
7	THE COURT: Never mind what you were thinking
8	about.
9	MR. HERBERT: Just one moment, I want to find
0	something.
1	THE COURT: All right.
2	(Pause.)
3	
4	Q Do you recall about two or three weeks after
5	the accident giving a statement to your road foreman,
6	Mr. Wilson?
7	A Yes. I remember that.
8	O You have had an opportunity before you came
9	into trial today to read over this statement, have you not?
0	A Not today I didn't. A couple of days ago I
1	might have. I don't remember yes.
2	THE COURT: Did you read it a couple of
3	THE WITNESS: The trial record, read the trial

You have read the trial report --



ars	Lewis-cross	105
A E	verybody gets restless, yes.	
r.	THE COURT: What is the answer?	
T	HE WITNESS: Yes, I get restless once in	a
while. Yes		
	THE COURT: Did you get restless before t	he
accident, is	that right?	
	THE WITNESS: What do you mean by restles	ss?
Q 1	Ever depressed before the accident at any	time?
Α :	In my life?	
Q	Yes, before you hired out with the railro	oad?
A	Yes, everybody gets depressed sometimes.	
Q	Did you ever have any illness before you	r rail-
road acciden	t?	
A	Yes.	
Q	What illness did you have before your ra	ilroad
accident?		
A	I had a nervous breakdown.	
d'isa	THE COURT: When was that, 1964?	
	THE WITNESS: Yes, in 1964.	
	THE COURT: When in 1964?	
	THE WITNESS: I think it was February.	
	THE COURT: February 1964. All right.	
Q	Were you ever a patient in any hospital	or
institution	or sanitarium?	
STATE OF THE PARTY	while. Yes while. Yes accident, is Q A Q road acciden A Q accident? A	THE COURT: What is the answer? THE WITNESS: Yes, I get restless once in while. Yes. THE COURT: Did you get restless before to accident, is that right? THE WITNESS: What do you mean by restless to get a series accident at any and a series accident at any and a series accident at any and a series accident at any and a series accident at any and accident at any and accident? A Yes, everybody gets depressed sometimes. Q Did you ever have any illness before your road accident? A Yes. Q What illness did you have before your range accident? A I had a nervous breakdown. THE COURT: When was that, 1964? THE WITNESS: Yes, in 1964. THE COURT: When in 1964? THE WITNESS: I think it was February. THE COURT: February 1964. All right.

		A-62
1	ars	Lewis-cross 106
2	λ	Yes.
3	Q	What hospital was that or tell me where it was?
4	A	Trenton.
5	Q	Trenton what?
6	A	Trenton State Hospital.
7	Q	State Hospital?
8	A	Yes.
9	Q	When were you in Trenton State Hospital?
10	A	February.
11		THE COURT: How lon were you there?
12		THE WITNESS: About six months.
13		THE COURT: Stayed there until mid-summer?
14		THE WITNESS: Yes, July.
15	Q	Had you during the five years before you were
16	employed by	y the railroad been treated or examined by any
17	physician?	
18	A	No.
15	Q	Any other practitioner?
20	A	No. It was anything wrong with me.
21		THE COURT: What is thaat?
22		THE WITNESS: There wasn't anything wrong with
23		THE COURT: Go ahead. You suddenly let your
24	voice fall	

MR. HERBERT: May I have this marked for identi-

xx

1	ars	Lewis-cross	107
2	fication.		
3		(Defendants' Exhibit C was marked for	
4	identi	fication.)	
* 5	Q	Mr. Lewis, I show you Defendants' Exhibit	С
6	for identif:	ication and ask you whether or not you reco	og-
7	nize what th	nat is?	
8	A	Yes.	
9		THE COURT: What is it?	
10		THE WITNESS: Report of health examination	n,
11	Pennsylvania	a Railroad.	
12		MR. JURON: Could we see it, please?	
13		MR. HERBERT: I have given you a copy.	
14		THE COURT: This is offered now?	
15		MR. HERBERT: I intend to offer it in evi	dence.
16		MR. JURON: That is the reason I want to	examine
17	it, your Ho	nor.	
18		May 1 have a voir dire?	
19		THE COURT: Yes.	
20	VOIR DIRE E	XAMINATION	
21	BY MR. JURO	N:	
22	Q	Clifford, is this your handwriting here?	
23	A	No.	
24		THE COURT: What is it you are showing?	
25		MR. JURON: We'll put a pencil around it.	

handwriting.

Let's put a circle around this, okay? I am marking this No. 2.

Did you do that?

A No.

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Did you me the ink portions of what I circled with the No. 2?

> No, I did not. That is not my handwriting. A

1	ars Lewis-cross 109
2	MR. JURON: Can we number them so we know which
3	questions are involved?
4	THE COURT: I suggest that you number them.
5	MR. JUROR: This is No. 1.
6	MR. HERBERT: This is not his writing.
7	THE COURT: No. 1 is not his handwriting.
8	MR. HERBERT: No. 3 and 4 is not his handwriting
9	but he testified that the checks on page 2 are his.
10	MR. JURON: I want to clarify that.
11	THE COURT: Clarify and stipulate.
12	On page 2, I put No. 3, are those checks your
13	checks?
14	A Yes, they are my checks.
15	Q Overe here, these, did you check these too?
16	I will mark that No. 4.
17	A These I did. These I did. These I did
18	(indicating).
19	THE COURT: I don't know what that means.
20	MR. HERBERT: Everything on the page he did,
21	Mr. Juron.
22	I stipulate page 3 and 4 were not his writing.
23	MR. JURON: All right.

he said he did not write. Let those be marked over by

THE COURT: I will take the parts except those

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1	ars Lewis c ross 110
2	the clerk
3	MR.HERBERT: Mr. Juron, will you stipulate that
4	page 2 is in his own handwriting as he just indicated?
5	MR. JURON: Yes, he said so.
6	MR. HERBERT: I offer page 2 of that report in
7	evidence.
8	THE COURT: Tell the clerk what is to be
9	eliminated.
10	MR. HERBERT: Nothing on page 2.
11	MR. JURON: I would feel that th entire paper
12	should be offered In evidence.
13	MR. HERBERT: I have no objection to that.
14	THE COURT: We will take it.
15	(Defendant's Exhibit C for identification was
16	received in evidence.)
17	BY MR. HERBERT:
18	Q Mr. Lewis, I show you Defendants' Exhibit C
19	in evidence and ask you whether or not you recognize that
20	as being your pre-employment physical answers to questions
21	that were asked of you?
22	A Yes, that is my handwriting. I filled it out.
23	Q You made those answers?
24	A Yes.
25	THE COURT: Is that so?
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like, on half level.

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Connected to it and that was on sort of a grade



and the answer? I can't figure out what he said.

might have been killed". That he constantly repeated during the interview I would say probably 20 or 30 times, "I might have been killed as a result of the accident".

He still felt even in 1973, shaken up as he put it and unable to work.

His past history is very pertinent. I noted that he had been seen apparently as a youngster by several psychiatrists because he was --

THE COURT: Where do you get that from?

THE COURT: Were you told that by him?

THE WITNESS: From the patient.

THE WITNESS: Yes, sit, by the patient.

A (Continuing) Told he was taken by his mother to a psychiatrist when he was 10 or 12. That he had a fracture of the left arm at the age of 14. He had a hemorrhoid operation in the Hospital For Joint Diseases.

I noted his history of psychiatric treatment at the Trenton State Hospital because I had seen an abstract of that record.

He was in the Army Reserve Corps for approximately six months.

He was living with his mother. His father had died in January of 1972 and there apparently was no family history of specific psychiatric treatment at all although



1	ars Kaplan-direct 165
2	A Well, not since his treatment at the Trenton
3	State Hospital & 1965, I believe.
4	THE COURT: Did he tell you anything about prior
5	employment other than working for some factories?
6	THE WITNESS: Except that he never held a job
7	for a long time but he worked for factories intermittently.
8	Q In addition to obtaining the history from your
9	patient, did you examine him at that time?
10	A Yes.
11	Q Can you tell us what your examination consisted
12	of generally and what findings, if any, were made?
13	A Yes, the interview consisted of an appraisal
14	of his mental status.
15	THE COURT: What did you do as to that?
16	THE WITNESS: Just a matter of talking to him
17	and asking questions and listening to his comments.
18	A (Continuing) And this aspect of the examination
19	revealed in my estimation what I described as a number of
20	paranoid or suspicious thoughts chiefly about his medical
21	treatment before and about the railroad and his employer.
22	He exhibited what I described as phobic ideas
23	or fear ideas concerning the kind of work he was doing,
24	although he was alert throughout the interview.
05	

He seemed fairly cooperative to me. I found

THE WITNESS: No, I am talking about all treatments including psychiatric treatment. He was not pleased with any of the treatments he was receiving.

His effect or mood seemed so ewhat flattened, he did not have emotion lability.



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Kaplan-direct

in physical neurology. 9

THE COURT: Nothing abnormal?

THE WITNESS: Not at all, no, sir. Essentially that was the nature of the initial examination.

Doctor, after having obtained the history and having examined the patient, did you form a diagnosis as to what his condition was?

Yes, I did.

Can you tell us what your diagnosis was and explain it to us?

Yes. It was my opinion this patient was suffering from a schizophrenic disorder, that is a psychiatric disorder of long duration.

THE COURT: What is a schizophrenic condition? THE WITNESS: It is one of the major psychiatric illnesses. It is one of the disorders in which there is a disorder of thinking rather than simply a disorder of mood where someone is depressed or manic. This is a disorder in which a patient may have delusions or even hallucinations and has a disturbance in ability to approach reality as a normal individual does. He misinterprets reality to a certain extent.

In this particular case when I saw him in 1973 I felt that it was characterized by paranoid thinking,

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perhaps more so than it was when he was treated at the Trenton State Hospital, when that aspect was not as prominent.

THE COURT: What is the evidence as to his schizophrenic condition?

THE WITNESS: This patient was admitted to the hospital because of arguments and threats to someone else and his history was reviewed and he was very restless, frightened, he appeared agitated.

was seen there and after a period of observation and treatment, the diagnosis was that of schizophrenic reaction
undifferentiated which means there is no major paranoid
disturbance or catatonic disturbance which are the two most
serious forms of schizophrenic reaction, but rather a general
feeling of thinking disorder.

In my opinion when I saw him in 1973, he had been suffering from this schizophrenic disorder of long standing and it was my opinion it had been aggravated by the accident, the occurrence which took place in 1969, since which time he has become so phobic, so fearful and unable to work.

THE COURT: But he did in your opinion from reading the records have this schizophrenic condition at the

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psychiatrically ill, rather acutely ill in 1964 when he was admitted to the Trenton Hospital. He improved while he was there and at the time of his discharge he was discharged in what was described as satisfactory social remission, which means that one doesn't use the term cured in terms of psychiatry, which one uses for pneumonia.

What happens is that the patient will get better, be able to make an adjustment, be able to work, and based upon that may be able to function for long periods of time and perhaps for the rest of his life.

THE COURT: But your opinion was he had not been cured at that time?

THE WITNESS: My opinion is that no patient with



1	ars	K.	aplan-cross	185
2		MR. JUROM:	Objection.	
3		THE COURT:	Sustained.	
4	. 0	With respec	t to the histor, he gav	e you about
5	his past hi	story, he to	ld you that socially ho	has always
6	been too pa	erticular, is	that right?	
7		With women,	yes.	
8	c	With respec	t to dating?	
9	Λ	Yes.		
10	0	He also tole	d you that he he could	never find
11	anyone who	"Could take	care of me and give me	respect",
12	is that cor	rect?		
13	Λ	Yes.		
14	c	Does that i	oricate to you that eve	n before this
15	accident of	October 26,	1969 he was the type o	f person who
16	was unsure	of himself?		
17	Λ	Yes.		
18	5	Pefore this	accident?	
19	Λ	I would say	so.	
20	c	Lack of con	fidence in his ability?	
21	۸	Ycs, I would	d say so.	
22	2	He told thi	s Court that he held a	number of
23	jobs before	he came to	the railroad including	which was a
24	job for a c	company called	d Circle F Corporation	and he left
25	this job be	cause he did	n't like the work.	

He worked for National Tubing Corporation,
Morrisville, doing factory work and left that because he
didn't like the work.

And he told us that he tried barbering and worked in the Continental Barber Shop in Princeton, New Jersey and left there because he didn't feel that he was that good a barber and also that he felt that he could get more money on the railroad. It was then that he hired out with the railroad.

Based upon that information and based upon the information he gave you about his past history and your review of his breakdown in the New Jersey State

Psychiatric Hospital when he became aggressive and assaultive and appeared argumentative, can you say whether prior to the accident he was the type of person who would he able to stand stressful situations which might face him when handling railroad cars, working around egupment?

A I can't tell whether he would stand it.

I would be against advising putting him to the test.

Q Would he be the type of person who might be likely to panic when faced with a stressful situation?

A It is possible.

Q Would he be the type of person who might exercise poor judgment when faced with a stressful situ-

THE WITNESS: No, sir.

THE COURT: All right, that is all.

Q Do schizophrenics who are unsure of themselves, lack confidence in their ability, are they the type of person who may be inclined to make excuses for their own inadequaces and their own failures?

A Yes.

O Is it possible that Mr. Lewis might try to attribute the results of his own inadequacies and mistakes, failures, to causes other than his own inadequacies?

A Yes, sir, that is part of this illnesss.

Assume that Mr. Lewis gave you a history of having on October 26, having taken a two-car cut down a gravity track and assume that the brakes were found to be operating perfectly moments before he was called upon to reapply the brakes, and assume further that the brakes were found to have been free of any defect upon inspection after the accident;

And assume that Mr. Lewis may have made a mistake in the manner in which he applied the brakes and felt he was going too fast so that he better get off, would he be the type of person, having had that experience who might try to attribute the reason for his being required to jump upon a brake failure rather than his own inadequa-



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3	year	as	compared	i to	the	init	ial ·	visit	in	1973.			

A paranoid, is he the type of person capable of convincing himself of the truth of unrealities?

A I suppose that is possible. I think every paramoid believes that what he is saying what we interpret as paranoid is true. That is why they are called paranoid, paranoia is a false belief.

Q As a paranoid is he the type of person who would attempt to justify his own actions and attribute the fault to some other cause?

A That is possible, yes.

O You would not recommend that Mr. Lewis perform the work of brakeman or car dropper, would you?

A I would be definitely against it because of what happened, yes.

O He is not totally unemployable, is he, Doctor?

A In my opinion he is not and I think that he should get some kind of work for his own sake to rehabilitate himself into society.

That would be of therapeutic value, would it not, helpful to his place in society?

Exactly, yes, sir.

MR. HERBERT: Thank you, Doctor.



ı	ars	240
2	FRANK	TALBOTT, called as a witness by
3	the do	ofendants, being first duly sworn, testified
4	as fol	llows:
5	DIRECT EXAM	INATION
6	BY MR. HERBI	ERT:
7	Ç	By whom are you employed?
8	λ	By the Penn Central Transportation Company.
9	Ç	In what capacity?
10	Α	Train master.
11	ç	Were you a train master back in October 1969?
12	Λ	I was.
13	Q	Where were you located when you were performing
14	your duties	as train master in 1969?
15	Α	My headquarters was Morrisville, Pennsylvania.
16	٥	As train master, Mr. Talbott, do you have general
17	supervision	over railroad operations in the Morrisville Yard?
18	Λ	Yes, sir.
19	Q	As train master
20		THE COURT: You might elicit the nature of this
21	Morrisville	establishment.
22	0	What is the Morrisville Yard in Morrisville,
23	Pennsylvania	1?
24	А	The Morrisville Yard is located in Morrisville,
25	Pennsylvania	a.

1	ars Talbott-direct 241
2	O Is that a classification yard?
3	A Yes, sir, it is.
4	Q What is a classification yard, Mr. Talbott?
5	A A classification yard is a point or yard where
6	freight cars are broken up and switched into new trains or
7	new classifications in order to reassign them for delivery
8	to customers.
9	Morrisville is primarily a classification yard
10	for points east as far as New York City.
11	Q Is that where cars are classified at that yard
12	with respect to their points of destination?
13	A That is true.
14	0 Mr. Talbott, as train master are you required,
15	sir, to make out reports when employees are injured?
16	A Yes, sir.
17	Q Are those reports made out by you or under your
18	supervision?
19	A Under my supervision.
20	O Are you required as part of the regular course
21	of your business to make and keep those reports?
22	A Yes, sir, we are.
23	MR. HERBERT: May we have this marked for iden-
21	tification.

XX

(Defendants' Exhibit H was marked for

1722,	Counselor?

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THE COURT: All right, offer it.

MR. HERBERT: I offer it in evidence.

THE COURT: Are you offering this under Section

1	ars	Talbott-direct 243	
2		MR. HERBERT: He already stated that was a	
3	record made	in the regular course of business.	
4	Q	Is that right?	
5	λ	Yes, sir.	
6	Õ	You are required to make it?	
7	λ	Yes, sir.	
8	Ç	It is part of your	
9		MR. JURON: I object to the fact that he is	
10	leading, yo	ur Honor, at this point.	
11		THE COURT: I will overrule the objection.	
12		MR. HERBERT: I thought I already established	
13	that it was	within the requirement of the statute.	
14		THE COURT: I overrule the objection.	
15		MR. HERBERT: I offer it in evidence.	
16	1.	MR. JURON: May I have a voir dire?	
17		THE COURT: No. What do you want to do?	
18		All right, go ahead. It won't take long.	
19	VOIR DIRE E	XAMINATION	
20	BY MR. JURO	N:	
21	Q	Mr. Talbot, did you ever speak to Clifford Lewis	
22	about this	accident?	
23	λ	No, sir.	
24	Ō	Did you direct this paper to be typed?	
25	Α	I would say yes because I direct all the reports.	

Lewis?

THE COURT: What is that question?

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Do you know when he spoke to Mr. Lewis?

1	ars	Talbott-direct	245
2		THE COURT: I don't understand that question	n.
3	c	You say that Mr. Campbell would obtain this	
4	informatio	n from Mr. Lewis among other sources?	
5	Λ	Yes.	
6	δ	Do you know when he spoke to him?	
7	Λ	No, sir.	
8	Q	Do you know if he spoke to him of your own	knowl-
ö	edge?		
10	A	Yes, sir, I do.	
11	Q	Were you there at the time?	
12	Λ	No, sir.	
13	0	When you signed this paper, which is Exhibit	Lt H
14	for ident:	ification, you accepted whatever version of	the
15	incident v	was on this paper, is that correct?	
16	A	That is true.	
17	Q.	You made no independent inspection yoursels	f, did
18	you?		
19	λ	No, sir, a subordinate made that.	
20	0	You made no independent verification of th	е
21	information	on on this paper, did you?	
22	A	Yes, sir.	
23	O	Did you speak to Mr. Lewis?	
24	λ	No, sir.	

TO ES COMARE TO SOURCE

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2	MR. JURON: I object upon the ground, your
3	Henor, that the true person to lay the foundation for the
4	introduction of this paper is not Mr. Talbott.
5	THE COURT: I don't think 1732 requires that
6	at all. The objection is overruled. You have by these
7	questions and by further cross-examination showed the so-
8	called infirmities of this paper and the jury must consider
9	those. But the paper itself is admitted under the
10	rules.
11	(Defendants' Exhibit H for identification
12	was received in evidence.)
13	THE COURT: Some of it is hearsay, of course.
14	BY MR. HERBERT:
15	Q Mr. Talbott, does that report indicate the car
16	which was involved in the particular accident to Mr. Lewis
17	A Yes, sir, it does.
18	O What was the car?
19	MR. JURON: Once more I must object, your Honor
20	because there is no connecting link. We have testimony
21	based upon hearsay. We have no ability to cross-examine
22	as to the so-called car number. This question involve
23	hearsay in the beginning.
24	THE COURT: You may prove the car number from

somebody else.

MR. HERBERT: I thought it was an exhibit in

quibble about that.

evidence, your Honor.

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Talbott-direct

	ars -
2	MR. HERBERT: I am free to read from an exhibit,
3	if your Honor please.
4	THE COURT: The question is does he know which
5	car it was and the answer is yes and it is dependent upon
6	that paper. If he reads from what the paper says then
7	it is hearsay but it is in.
8	MR. JURON: If it is hearsay Mr. Herbert is now
9	reading something in which is hearsay.
0	MR. HERBERT: There is a statute which allows
1	that in evidence.
2	THE COURT: The jury is told it is hearsay,
3	unless you prove how the number of the car and the identity
4	of the car and which I suppose certain things were done,
5	there is no proof.
6	MR. HERBERT: Under the statute which has
7	permitted this document into evidence, that is an exception
8	to the hearsay rule so any hearsay objections are of no
9	moment.
20	MR. JURON: If your Honor please
21	THE COURT: Let me see it.
22	MR. HERBERT: Having introduced it into evidence
23	I am entitled to read to the jury what was in evidence.
24	THE COURT: Where it says PRR, is that the
25	number?

Talbott-direct

1	ars Talbott-direct 249
2	MR. HERBERT: Identity of the car.
3 .	THE COURT: Do you know who provided this
4	information contained In this Paragraph No. 35? Is that
5	the number? It is down at the last paragraph.
6	Do you know who provided the information con-
7	tained in the paper?
8	THE WITNESS: This perticular cer, no, sir.
9	Nermally this is obtained by the record of the switch list
10	that the crew may be handling or the man himself. It can
11	be obtained three or four different ways.
12	THE COURT: I fear I must sustain the objection:
13	MR. HERBERT: Your Fonor, is this exhibit in
14	evidence or not in evidence? I thought it was in
15	evidence and it was made and kept in the regular course of
16	business.
17	THE COURT: That doesn't mean we can rely upon
18	the number.
19	MR. HERBERT: May I be permitted to read from
20	Defendants' Exhibit H in evidence?
21	THE COURT: Yes.
22	MR. HERBERT: The record is already established
23	it is kept within the requirements of the statute.
24	THE COURT: I will allow that.
25	MR. JURON: If your Honor, we already established

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that there is no basis and that this is based upoin hearsay.

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THE COURT: The basis is Rule 1732 to cover
4 business transactions. There is some degree, at least
5 some preliminary proof that it is valid but it doesn't

MR. JURON: May I be heard?

mean that it is absolute.

THE COURT: No, you may not be heard any further.

I have ruled, I am sorry.

MR. HERBERT: I would like to read from Defendants' Exhibit II in evidence which is the personal injury report involving an accident to Clifford J. Lewis which occurred at 2.45 a.m. on 10/26/69 in the Morrisville, Pennsylvania Yard. I will not read everything.

THE COURT: Just read the number.

MR. HERBERT: C. J. Lewis, freight brakeman, crew 911-C, rode first car of two-car cut PRR car No. 112851 with Peacock-type brake and after losing control of the movement, jumped from west end side ladder falling to the ground at west end of 1-A yard extensively bruising left knee."

THE COURT: That primarily was the number of the car.

MR. HERBERT: That is all I have of Mr. Talbott, your Honor.

	. A-91
1 .	ars Talbott-cross 251
2	THE COURT: Any questions?
3	CROSS FXAMINATION .
4	BY MR. JURON:
5	Q Mr. Talbott, you don't know which car was
6	involved in this accident, do you, you yourself?
7	A Only by the report.
8 .	Q Is it possible that the person who wrote those
9	numbers down could have been mistaken?
10	A It is possible.
11	O Is it possible that the possible who wrote down
12	those numbers never even saw the accident?
13	A Yes.
14	Q Is it possible that the person who wrote down
15	the numbers never even spoke to Mr. Lewis about which
16	cat he was riding on? Is that possible?
17	Yes, the person made the report, yes.
18	Q Is it possible that the person who gave you the
19	number never even looked at this car, is that possible?
20	A Not in this case, no, sir.
21	O It is impossible?
22	A Yes, sir.

Mr. Campbell, my night train master.

the number of the car?

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Who was it that gave you the information alout

	1	ars	Talbott-cross	252
	2	Ö	Did you ask him to take a look at the car?	
	3	λ	Yes, sir.	
	4	Ç	He said he looked at the car?	
	5	Α	He looked at it with a mechanical equipment	man
	6	with him.		
	7	Č	What timd did he look at it?	
	8	Λ	The time I don't remember.	
	9	2	Do you know when he looked at it?	
	10	Α	Yes, sir, that day that morning.	
	11	Ů.	How long after the accident?	
	12	Λ	I would assume	
	13		THE COURT: Don't assume.	
	14	Α	Then I don't know.	
40	15	Q	Did you ever speak to any of the 12 other ca	ar
	16	droppers t	that were there at the time?	
	17	λ	No, sir, I did not.	
	18		THE COURT: There is no proof there were 12	
	19		MR. HERBERT: I object as to form.	
	20		THE COURT: Yes, objection sustained.	
	21	Ċ	Did you speak to the conductor?	
	22	A	No, sir.	
	23	~ 0	Did you go down to the track where the acci	dent
	21	is suppose	ed to have taken place?	
	25	λ	No, sir.	

Ta	1	bo	t	t-	cr	0:	35

1	ars	Talbott-cross 253
2	Q	Did you ever check out the facts yourself after
3	the accide	ent?
4	λ	No, sir.
5	Q	You weren't on duty on October 26, 1969?
6		Yes, sir.
7	ċ	Are you sure?
8	А	Yes, sir.
9	Q	What time?
10	λ	7 a.m. until I got finished.
11	Ò	That would be about some four and a half hours
12	after the	accident occurred?
13	Δ	Yes, sir.
14	ć	When was this accident reported to you?
15	λ	On my arrival at the office.
16	c	Who reported it?
17		THE COURT: What do you mean when you say when
18	you arriv	vod?
19		THE WITNESS: 7 a.m.
20	0	Who reported it to you?
21	λ	The night train master, assistant train master.
22	0	Mr. Campbell?
23	λ	That is true.
24	C	At that time did he have this report ready for
25	you?	

1	ars	Talbott-cross	254
2	A.	No, sir.	
3	Ç	When was this report prepared for you?	
4	Λ	That was prepared there again I can't as	sume;
5	I don't kn	ow.	
6	Q	Is it possible this was prepared days after	that?
7	Α	It could have been.	
8 .	Ç	Is, it possible that Mr. Campbell's recollec	tion
g	goes back	several days when he prepared this paper?	
10	Ą	I have no idea.	
11		MR. JURON: I have no further questions.	
12		THE COURT: All right.	
13		Anything else?	
14		MR. HERRERT: Nothing else.	
15		THE COURT: You are excused.	
16		(Witness excus	ed.)
17		THE COURT: Next witness.	
18		MR. HERBERT: Your Monor, I told the Court	that
19	there wou	ld be medical testimony in addition to what w	ve had
20	today.	I have no more testimony today.	
21		THE COURT: All right.	
22		I will have to excuse the jury until 10 o'c	clock
23	tomorrow	morning.	
24		MR. HERBERT: May we approach the bench be	fore
25	we excuse	the jury, your Honor?	

2		THE	COURT:	Take	the	one	which	involves
3	negligence.							

MR. HERDERT: I move to dismiss the complaint on the ground that the plaintiff failed to prove or submit any evidence which shows that the railroad had any notice that these brakes were defective.

THE COURT: I will consider that and I feel
I should grant it, Mr. Juron, unless you can show any
reason to the contrary.

MR. JURON: The railroad is required to provide its employees with a safe place which includes safe equipment and for the purpose of this rotion we must accept the version of plaintiff and plaintiff's version is that the brakes did not hold. I take it at this point we are talking about --

THE COURT: Proof of notice?

MR. JURON: There is no requirement of notice.

THE COURT: Talking about the Appliance Act.

MR. JURON: I am talking about the FELA now, the Federal Employees Liability Act. They are still required to provide safe equipment and once more I am talking about the Federal Safety Appliance Act only

because the question is was there a case made out.

THE COURT: I am not talking about that at all.

	A-96
1 .	ars
2	I am talking and Mr. Herbert's motion is directed to the
3	negligence phase of this.
4	MR. JURON: There is no requirement under FELA
5	of notice.
6	THE COURT: Isn't there a requirement of
7	negligence, Mr. Herbert? That is a basic element in the
8	λct.
9	MR. HERBERT: Your Monor, the Federal Employee
10	Liability Act is a negligence statute and there is ample
11	authority for the proposition that there must be proof of
12	notice of a defect before a railroad can be charged with
13	having been negligent in failing to repair the defect or
14	failing to warm the plaintiff about the defective appliance
15	As a matter of fact, the testimony in this
16	case shows that moments before he was released and this
17	accident occurred the brakes worked fine. That is
18	what the plaintiff said and there is no proof of anything
19	wrong or any defect in those brakes other than the fact
20	that the plaintiff says they didn't work, but this is not
91	proof of notice to the railroad.

MR. JURON: May I be heard on that? The fact

that --

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MR. HERREFT: Your Honor, in my requests to charge I asked the Court on the question of notice, and I

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realize the cases which I have set forth in my requests
to charge no notice is essential under the Federal Employees
Liability negligence statute.

MR. JURON: There was no testimony that Mr.

Lewis tested the brakes while going down onthe gravity hill.

THE COURT: He tested them before that time.

MR. JURON: That is correct, sir, under different conditions while the --

THE COURT: There is no proof of any negligence whatever it is. What is he testing? There is no proof of negligence or notice, is there?

MR. JURON: There is proof that the brakes on the car did not hold. There is no need to show notice with respect to a vehicle which they are required to provide to --

THE COURT: I am going to -- we have 30 minutes difference between 10 o'clock and the time the jury arrives and I will come down at 10 o'clock and if you have any cases on this question involving this motion bring them out.

What about the other motions?

MR. HERBERT: I would like to move to dismiss that portion of his claim which refer to an aggravation of a schizophrenic condition on the ground that the plaintiff



The result of as testim ony of the last witness does not do about the examination of the car? Have you got anybody to tell about that?

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MR. HERBERT: I must quarrel with the Court. With respect to what you feel the testimony of the last witness shows. It has been established that it is reported this is the car involved.

THE COURT: That is what you say. It may or may not have been done and it is a matter for the Jury to decide.

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Has he been paid?

MR. HERBERT: He testified that he was paid and paid by the railroad so this is not part of this man's



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2	no difficulty before the accident	. I	think	the	record
2	would indicate that sir.				

THE COURT: Well, I will ask the reporter to see if he can find Burton's testimony on progressis in a few minutes.

That is my inclination, Mr. Herbert, to reserve on both of those.

MR. HERBERT: Last night defendant made a motion to dismiss as to the negligence claim under the Federal Imployees Liability Act on the ground that the plaintiff failed to prove any negligence on the part of the railroad and an essential ingredient of negligence under the Federal Employees Liability Act is a showing of notice of a defective condition.

THE COURT: Yes, notice is necessary.

MR. HERBERT: I would submit to this Court as a matter of law he failed to prove any notice.

MR. JURON: May I be heard?

THE COURT: Yes, I always hear both sides.

MR. JURON: Under the FELA the railroad is required to give him a safe place to work. Failing to give him a safe place to work they have violated the FELA requirement.

THE COURT: What is the difference between your

1 ars 280

FELA claim and the Appliance claim?

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MR. JURON: Under the Appliace claim if there
is a finding that the brakes did not hold, coupling or
other device did not hold, there is negligence per se
and there is no comparative negligence, that is absolute
liability.

Under the FELA a finding that the railroad failed to give a safe place to work and the jury finds that there may be some contributory negligence on the part of plaintiff, then you have comparative negligence and that to my mind is the distinguishing feature.

THE COURT: You mix up it seems to me two things. You are talking about comparative negligence. Of course the rule is the defendant must prove that the plaintiff was contributorily negligent. There is no doubt about that, is there, Mr. Herbert?

MR. HERBERT: I don't dispute that proposition of law.

THE COURT: That is not the part that is involved.

What do you say by way of reply to what the lawyer said?

MR. HERBERT: He is confusing the two statutes.

The Federal Employees Liability Act, Section 505 is a

1 ars 281 negligence statute and one of the prerequisites to negligence is that the plaintif has the burden of proving the defective condition and the defendant had notice or should 5 have had notice of the defective condition in sufficient time to worn the plaintiff. The case that I have cited in my request to charge No. 8 stands for this very proposition that there 9 must be proof.

THE COURT: You asked for that charge? MR. HEREERT: I did, your Honor. But I am telling the Court now that there is no proof sufficient --THE COURT I just asked one guestion. Then you get into another one.

> You say there is no proof of notice? MR. HERBERT: No proof of n otice.

THE COURT: How was there notice, Mr. Juron, constructive?

MR. JURON I would like to consolidate my thoughts. My thought is that where the issue is safe place to work, there is no requirement to show notice.

THE COURT: We are not concerned with the safe place to work, we are concerned with the FFLA Act, which is, as I read the cases, the essence of which is negligence. Am I wrong on that?

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MR. JURON: I beg to differ. I feel that there is a conscious obligation upon the part of the rail-road to provide a safe place to work. FELA does that and where the issue is a safe place to work and the jury finds that the railroad did not provide a safe place to work, under FELA there is no requirement to show notice.

THE COURT: Have you got any cases to that effect?

MR. JURON: I believe I have something in the original requests to charge.

THE COURT: Give me the page. If you will step out I will ask the clerk to see if he finds Eurton's testimony about the prognosis.

MR. HERBERT: Yes.

MR. JURON: At the end of the direct examination of Dr. Eurton.

THE COURT: Try that.

Any other point I haven't covered?

These are my determinations as I stated them:

I am reserving on the two motions with respect to prospective loss of wages and any disability in the future and, of course, the charge must be that plaintiff must show by a fair preponderance of the evidence that it is reasonable certainly that so-and-so will take place.



	1	ars	Lind-	310
	2		THE COURT: That is all.	
	3		. (Witness excuse	ed.)
49	4		MR. HERBERT: I call M.r David Halderman.	
	5			
	6	DAVID	W. HALDERMAN, called as a	
	7	witne	ss by the defendants, being first duly swor	m,
	8	testi	fied as follows:	
	9	DIRECT EXAM	INATION	
	10	BY MR. HERE	ERT:	
	11	ć	Mr. Halderman, by whom are you employed?	
	12	Λ	Penn Central Railroad.	
	13	Q	How many years have you been employed by	he
	14	Penn Contra	1 Railroad?	
	15	A	34 years.	
	16	ċ	What have been your duties during the 34 y	rears?
	17	What jobs h	ave you held?	
	18	Λ	I held repairman, inspector, foreman, assi	stant
	19	general for	eman.	
	20	5	Which department?	
	21	Λ	Maintenance of equipment department.	
	22	ō	Did that include railroad cars?	
	23	A	That is correct.	
	24	Q	What is your present title or position?	
	25	Ÿ	Assistant general foreman.	

1	ars	Falderman-direct 311
2	. O I	low long have you been assistant general
3	foreman?	
4	λ 1	O years.
5	Q 1	There is your office?
6	A M	Corrisville, Pennsylvania.
7	2 7	s assistant general foreman are you required
8	or is the off	ice required to inspect railroad cars?
9	A o	That is correct.
10	Q 7	are you required to inspect Mailroad cars when
11	the inspection	on is following an injury to an employee?
12	λ	That is correct. We have a regular form that
13	we make the	inspection on.
14	0	Is it part of your business to make those
15	records and l	keep the records of inspection of ailroad
16	equipment the	at might be involved in a personal injury
17	accident?	
18	λ :	That is correct.
19	Q :	In addition to the company policy, is there any
20	statute which	n requires you to make and keep these records
21	in the regula	ar course of business?
22	Α	Yes, the Interstate Commerce Commission.
23	0	The Interstate Commerce Commission requires that
24	all cars be	inspected following an accident?
25	λ	Right, sir.

24

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MR. JURON: Objection, your Honor.

THE COURT: Overruled. If he knows he can

1	ars Malderman-direct 313
2	tell.
3	A Made by W. F. Campbell, assistant train master.
4	and Alfred Zuchero, gang foreman.
5	Q Who is Alfred Zuchero, an employee in your
6	department?
7	A That is correct.
8	Q Did he come under your supervision?
9	A Yes, sir.
10	Q Is Mr. Zuchero presently employed by the rail-
11	road?
12	A No, M.r Zuchero is deceased.
13	O When did he die?
14	A 1972.
15	O Is Mr. Campbell employed by the railroad?
16	A No, sir. He is employed by a railroad by th
17	Norfolk & Western Railroad somewhere in Virginia.
18	Q Was the exhibit that you have before you a
19	report made in the regular course of your business?
20	A That is correct.
21	O Were you required in the regular course of bus
22	ness to keep and make that record?
23	A That is correct.
24	MR. HERBERT: I offer it in evidence, your

Honor.

1	ars	Halderman-direct 314
2		THE COURT: Show it to counsel.
3		MR. JURON: May I have a voir dire, your Honor?
4		THE COURT: Yes.
5	- VOIR DIRE EX	AMINATION
6	BY MR. JURON	
7	Ď	M.r Halderman, this paper relates to a particular
8	railroad car	?
9	А	That is correct.
10	Q	Did you ever see this railroad car yourself?
11	A	No, sir.
12	ç	Did you know the person who did see the railroad
13	car?	
11	Λ	Yes, sir.
15	Q	Who?
16	Α	Alfred Zuchero and William Campbell.
17	ð	That is based solely upon what is in this paper?
18	Λ	That is correct.
19	Q	You are saying that they saw this car because
20	they wrote d	own on a piece of paper they saw the car, right?
21	Λ	That is correct.
22	O	That is your only information?
23		MR. JURON: I object to that question.
24		THE COURT: Yes, sustained.
25	Q	Do you have any other knowledge except for the

1	ars Halderman-direct 315
2	fact that they said on this paper that they saw this car?
3	A No, sir.
4	THE COURT: Of your own?
5	THE WITNESS: Of my own, no, sir.
6	Q Doyou know they examined the car that was
7	involved in the accident or was it some other car?
8	A I only go by what they told me on the sheet.
9	Q In this railroad yard, th is is a freight yard
10	and can you give us some indication of how many cars they
11	have?
12	MR. HERRERT: At what time?
13	O Say about 2.30 in the morning on October 26,
14	1969?
15	MR. HERDERT: Objection to that, it is not
16	relevant.
17	Q Do you know how many cars there were in the yar
18	at 2.45 a.m. on October 26, 1969 when Mr. Lowis said he had
19	an accident?
20	A No, sir.
21	Q Do you know how many cars there were there four
22	hours later?
23	A No, sir.
24	O Can you give us an estimate?
	TUE COURT: What difference does it make?

1	ars	Halderman-direct 316
2	. 0	Do you know how many tracks there are?
3	Α	45 tracks.
4		THE COURT: Wait a minute.
5		Is there an objection here?
6		MR. HERBERT: Where?
7	1	THE COURT: There is an objection.
8		MR. HERBER1: Can we confine ourselves to the
9	location and	d site? It is too broad, your Honor.
10		THE COURT: Sustained. It is irrelevant.
11	Q	Do you know where the car was inspected?
12	λ	I am tell a you what is written on the report,
13	No. 1 in A	yard.
14	· · ·	You say that and that is the reason you are
15	saying it b	ut do you have any independent recollection?
16	Λ	No, sir.
17	Q	Possibly they looked at the wrong track?
18		MR. HERBERT: Objection as to the conjecture.
19		THE COURT: Sustained.
20		MR. JURON: This man is under cross-examination
21	Ō	Is it possible that these men looked at the
22	wrong car?	
23		MR. HERBERT: Objection, your Honor, by what
24	he means by	wrong car.
25	Q	Did they look at some car other than the car

1	ars Halderman-direct 317
2	that was involved in this accident, is that possible?
3	MR. HERBERT: I object to that because he wouldn'
4	know. It is pure conjecture.
5	THE COURT: I will let it be answered.
6	A I would have no way of knowing whether they
7	looked at the wrong car.
8	Q You wouldn't know one from another?
9	A No.
10	Q Is it possible that these mon never even looked
11	at the car, is that possible?
12	A It is possible.
13	Q Is it possible that they looked at the car at
14	a distance ten feet away from just sich a car, is that
15	possible?
16	Λ It is possible.
17	MR. JURON: Thank you very much.
18	I object to that.
19	THE COURT: Just hold it.
20	This paper is kept in the regular course of
21	business, is that correct?
22	THE WITNESS: That is correct.
23	THE COURT: The regular course, part of the
24	business of the yard at Morrisville to keep this record?

THE WITNESS: That is correct.

1	ars Halderman-direct ?18
2	THE COURT: You offer the paper?
3	MR. HERBERT: I have offered it.
4	MR. JURON: Objection because this
5	THE COURT: Overruled.
6	MR. JURON: There is no showing that this was
7	the car that was involved in the accident.
8	THE COURT: I think this may be taken in connec
9	tion with the other report of accident.
10	MR. JURON: Ther is no showing that this was
11	the car involved in the accident.
12	THE COURT: Does this state the number of the
13	car?
14	MR. HERBERT: Yes, your Honor.
15	THE COURT: The same as the other one.
16	MR. HERBERT: The same number that is report.
17	THE COURT: It is up to the jury to decide
18	whether or not the two papers constitute sufficient proof
19	as to the identity of the car.
20	MR. JURON: This paper is based on the paper
21	and it is not an independent paper.
22	THE COURT: The objection is overruled.
23	(Defendants' Exhibit I for identification was
21	received in evidence.)
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1	ars Halderman-direct 319
2	BY MR. HERBERT:
3	Q Mr. Halderman, are you familiar with the
4	operations of the hand brakes on
5	MR. JURON: Objection, your Honor. Taking
6	my redirect, it is improper. I did not go into that.
7	THE COURT: I will allow him to make application
8	to go back.
9	MR. HERBERT: He was on voir dire, your Honor.
10	I stepped away to give him a voir dire on the admissibility
11	
12	of the document. This I am entitled to ask.
13	THE COURT: We are still on direct as a matter
	of fact.
14	MR. HERBERT: He is.
15	THE COURT: There has been no cross-examination
16	so you may go on with the questioning, in other words.
17	Q Are you familiar with the manner in which
18	hand brakes on railroad cars operate?
19	A Yes, sir.
20	O Are there types of cars which have what is known
21	as a triple handle brake release?
22	A Yes, sir.
23	Q Can you tell us, there are a number of types
24	of manufactures of brakes, are there not?
25	
I	A That is correct.

That is correct.

.		Halderman-direct 320
1	ars	
2	Ω	Can you name some of them?
3	A	Universal, Ajax, Peacock, Motor Wheel.
4	0	Are those types of brakes made by these manu-
5	facturers	substantially similar in manner in which they
6	operate?	
7	. λ	Yes, sir.
8	Q	Can you tell us how does one release a brake of
9	a car whi	ch is equipped with a brake release handle?
10	A	The trip release handle is thrown from left to
11_	right.	In other words, towards 3 o'clock set on top of
12	the brake	•
13		THE COURT: Does this tighten the brake?
14	A	No, releases it.
15		THE COURT: The wheel tightens the brake.
16	What is t	urned to tighten the brake?
17		THE WITNESS: The brake wheel.
18	Q	When you throw a brake release handle, to
19	release t	the brakes, does the chain drop?
20	λ	Yes, that releases it completely.
21	ņ	These are hand brakes, is that right?
22	Λ	That is correct
23	0	In order to tighten a brake, would the trip

mechanism, the brake release, how are the brakes applied

and tightened?

	Α.	The	trip	handl	le re	eleas	se must	t bo	throw	back
to	the 3 o	'clock	posi	ition	and	the	wheel	is	turned	clockwise
to	tighten	the b	rakes	5.						

Mr. Halderman, plaintiff has told us that he was riding a boxcar, a cut of cars down the gravity track in the Morrisville Yard and that before he was released to go down, he climbed up the side ladder and swung to the brake platform.

He stood on the brake platform and he told us that he threw the brake release, that he tested the brakes by winding as tight as he could.

He told us that the engine was behind, I think there was some 14 or 15 boxcars in between his car and the engine pushing from behind. That when the engine pushed these boxcars as he tested the brakes, he could hear the wheels screeching, of his car screeching on the track.

He told us that he knew he had a brake.

He told us that he then gave the signal to his crewman to release him. He said when he was released, he released the brake, started to roll and immediately started to wind and wind the brakes but that no brake was taken.

Based on this information, do you have an opinion as to whether or not, as to what happened that

ars Halderman-direct 322
that caused the brakes on that occasion not to have been
applied?
A My opinion would be that the handle was not
thrown back to the 3 o'clock position.
Q Will you explain what you mean by that, sir?
A In other words, when the trip handle release i
in the off position, you can spin the wheel, it is like in
neutral. You must put the brake back in the 3 o'clock
position to lock it, to take up the ratchet.
Q In other words, if you threw the hand brake
release handle to release the brake, that drops the chain
and the brakes release?
A That is correct.
Q And you spin the wheel, then what happens?
A Nothing.
Q Is it necessary for you to reset that brake
release lever?
A Trip the lever to the left or the 3 o'clock
position.
O Unless that is done
THE COURT: I am a little confused about this
3 o'clock position. What do you mean by that?
THE WILL ESS: In other words, to throw the

handle you throw it to the right.

1	ars Halderman-direct 323
2	THE COURT: Where 3 would be on a clock?
3	THE WITNESS: Right.
4	THE COURT: What does this do?
5	THE WITNESS: That releases the brake back to
6	the 9 o'clock position to lock.
7.	THE COURT: When it is locked that means that
8	the brake is
9	THE WITNESS: Can be wound up and will hold.
10	THE COURT: But if it is in the 3 o'clock
11	position it would not hold?
12	THE WITNESS: It would be like a neutral.
13	THE COURT: Then in order to be effective the
14	lock must be on the 9 o'clock position?
15	THE WITNESS: That is correct.
16	Q Would that be true of the type of brake that
17	has been described on Defendants' Exhibit I in evidence?
18	Λ Yes.
19	Q That is the way the brake of that car would have
20	to be operated?
21	A That is correct.
22	Q Unless that brake release handle had been
23	released, was thrown back again, when you turned the brake
24	wheel nothing would happen?
25	A That is correct.

1	ars Halderman-direct 324
2	O It is as if it was in neutral?
3	A That is correct.
4	Q If you throw it back to reset it and you turne
5	the wheel, what would happen?
6	A The brake would take up.
7	Q You throw it back to reset it where it was
8	before you released it?
9	A That is correct.
10	Q It would apply the brake? •
11	A That is right.
12	Q How many turns is necessary in order to apply
13	the brakes of this type of car?
14	A On this record it says three wraps, that would
15	be oproximately six turns of the wheel, three wraps of the
16	chain.
17	THE COURT: Is that your opinion?
18	THE WITNESS: No, this is this one here. My
19	opinion
20	THE COURT: He is asking your opinion.
21	THE WITNESS: My opinion, approximately six
22	wraps of the wheel, turns of the wheel should brake it
23	hack up.
24	Q How many wraps of the chain would be required
25	in order for the brake to hold?
11	

1	ars Halderman-direct 325
2	A 2 to 1, 6 to 3. The ratio is 2 to 1.
3	THE COURT: What do you mean by that?
4	THE WITNESS: In other words, six turns on the
5	wheel would give you three wraps on the chain.
6	THE COURT: Six turns on the wheel would result
7	THE WITNESS: In three of the chain.
8	THE COURT: By wraps do you mean once around
9	the wheel?
10	THE WITNESS: Once around the spoke.
11	Q When you wrap up the chain that pulls up the
12	chain?
13	A Yes, sir.
14	. O And does it press the brake shoes against the
15	car?
16	A Pulls the shoes against the wheel.
17	Q Can you tell me this particular car that is
18	described in Exhibit I in evidence, how many brakes does
19	that have, brake shoes does it have?
20	A This particular series of cars are equipped with
21	a shoe on sch wheel. That would be eight shoes.
22	Q All controlled by one brake?
23	A One hand brake, yes, sir.
24	THE COURT: Will you explain that, sir, one
25	brake?

2	THE WITNESS: On each wheel there is a brake
3	shoc that pulls up against each wheel. This one wheel
4	is turned with the lever, talking about the wheel of the
5	car now with shoes against the wheels of the car to stop
6	it. We are not talking about the brake wheel.
7 .	THE COURT: All right.
. 8	When the brake is put on and it is operated
9	with the conditions you stated as necessary, what does this
10	do to each wheel of the car?
11	THE WITNESS: It pulls a shoe, each shoe up
12	against the wheel to stop it.
13	THE COURT: You have four wheels? How many
14	sheels does each car have?
15	THE WITNESS: Four pair or eight wheels.
16	THE COURT: Is that true of both wheels of the
17	pair?
18	THE WITNESS: On each wheel.
19	THE COURT: This brake asserts an effort on
20	eight wheels?
21	THE WITNESS: That is correct.
22	THE COURT: All right.
23	MR. HERBERT: Thank you, Mr. Halderman.
24	THE COURT: Cross-examination.

1	ars Halderman-cross
2	CROSS EXAMINATION
3	BY MR. JURON:
4	Q If this was a two-car cut, the one brake would
5	be braking two cars, is that right?
6	A That is correct.
7	Q And the brake shoes on the one car would be for
8	the purpose of stopping that one car as well as the car
9	behind it, is that correct?
10	A That is correct.
11	Q Now, the number of wraps as you say of the brake
12	wheel, that depends on the length of the chair, does it not?
13	A Yes.
14	Q Some cars have shorter chains and some cars
15	have longer chains, is that right?
16	A That is correct.
17	Q The particular car involved in this accident,
18	would you have any idea how long that chain was?
19	A Only what I read on this report.
20	Q Do you know how high up the brake was?
21	THE COURT: Above what?
22	Q How high above the ground the brake was?
23	A No. I would say the brake is approximately
	12 to 14 feet above the ground. It is a boxcar involved

here.

4.5

1	ars raiderman-cross 520	
2	Q Do you know whether it was a low brake or a	,
3	high brake? Do brakes vary in height on boxcars?	
4	Λ Yes, sir.	
5	Q Depending on the size of the boxcar?	
6	A Yes.	
7	Q Do you have any idea how high this boxcar was	
8	aside from any paper?	
9	A I would say that the height is approximately	
10	14-1/2 foot.	
11	Ω As a matter of fact, it has two chains, doesn'	t
12	it? A chain from the wheel that goes to a rod and from	
13	the rod underneath?	
14	A That is correct.	
15	Q Can you say how long each of those chains were	?
16	A Only by looking at the paper. In this parti	.c -
17	ular one	
18	Q Does that describe what one chain or two	
19	chains?	
20	A Describes one chain.	
21	Q Describes the one chain and is silent about he	wc
22	long the other chain was, is that correct?	
23	A Right.	
24	THE COURT: What do you mean describes one	
25	chain?	

Halderman-cross

2	THE WITNESS: One chain, the chain involved
3	on the hand brake is the one that wraps around the shaft that
4	is tightening it up.
5	THE COURT: What is the other chain?
6	THE WITNESS: This counselor is talking about
7	the chain that hooks from the wheel brake on the bottom,
8	there is a short chain there which isn't involve in the
9	hand brake.
10	Q There are two chains, right?
11	A That is correct.
12	O One chain goes underneath, is that right?
13	A That is correct.
14	2 Sometimes it snags on something?
15	A It has bell cranks right on it.
16	Q If it hasn't got the bell cranks then there is
17	something it snags on?
18	THE COUTT: What do you mean by that?
19	MR. JURON: Gets caught on something.
20	MR. HERBERT: Which line?
21	Q Any line.
22	A Any chain it is possible that could get
23	Q It can get caught? When the brake is in a
24	release position you cannot wind it, is that correct?
25	A Pardon?

2	When the brake is in a release position the
3	chain will not wind up, is that correct?
4	A When you say release position, you are confusing
5	me.
6	Q Forgive me. That's the last thing I want
7	to do.
8	When the brake is turned to the right the
9	lever is in the release position, it cannot be wound up?
10	A That is correct.
11	O When it is turned to the left, then you can
12	wind it up?
13	A That is correct.
. 14	O Now, when you turn the lever
15	THE COURT: Wait a minute, I am confused.
16	When you turn it to the left what happens?
17	THE WITNESS: The lever is thrown to the left,
18	it is in the lock position and the chain brake will ratchet
19	up. When it is to the right or as I said 3 o'clock, it
20	would be in a neutral position, it will not wrap up.
21	Q When it is to the right, in the neutral posi-
22	tion, if you turn the wheel would you he ir anything?
23	A You would hear a slight clicking noise.
24	Q Would the chain be tight?

When it is in the neutral position?

Halderman-cross

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To the right, turning the wheel would it be tight?

No.

Turning to the left, when you turn the lever to the left, that is called a hold position, is it not?

This is the locking position.

Fine. At that time when you turn the wheel there will come a time when the chain will appear to be tight, is that correct?

That is right.

That is how you know the brake should be working, is that correct?

It will be up tight, yes.

Supposing I told you that on Thursday Mr. Lewis testified that when he turned the wheel, before going down, while on the hump, he kicked the chain and it appeared to be tight to him. Wouldn't that tell you that the lever was in the hold position, turned to the left before he was released?

MR. HERPERT: I just have a question. This is not clear if this is after he tested or before. I object to the form of the question.

THE COURT: The objection as to form is sustained.

Let me repeat myself. . 0



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ALTERNATE JUROR NO. 1: Yes, I do.

THE COURT: It is very serious.

All right.

(Alternate Juror No. 1 left the courtroom.)

(In open court - jury present.)

THE COURT: I may say to the members of the jury that one juror, Alternate No. 1 in the front seat, has been excused by the direction of the Court with the consent of counsel.

I wish to remind you that, as I instructed you in the beginning, you are directed not to talk to anyone about this case during the trial. That is whether it is in or out of this courtroom no matter where it is and you are not to permit anyone to talk to you about the case.

Now, we are ready to go on with Mr. Juron's cross-examination.

We have arrived at this procedure.

I have with the consent of counsel asked the court reporter to find the testimony given by the plaintiff with respect to certain aspects of what happened to the brakes and so forth, what he may have observed or did and Mr. Juron will incorporate that portion which will be read by the reporter into his question and I will ask the reporter to indicate on his record that he read a certain

1	ars
2	area, mark it and include it in the record of this case.
3	DAVID W. HALDERMAN, resumed.
4	(Testimony of Clifford Lewis read as
5	follows:

"Q Can you tell us what happened?

"A Well, it was my turn to ride. You do it by turns.

"THE COURT: Just tell us what you did?

"A I went out to my turn, there was two boxcars and I got on the first boxcar, climbed up and got on the platform, the first boxcar, the back of the first on the left-hand side.

"I applied the brakes, I threw the ratchet over to the left and applied the brakes winding it clockwise.

"I looked down, the chain came up, the slack came up and the chain went up, it rolled on.

"Q What did that mean to you?

"A It means that there was brakes winding up.

"Q At that time where was the car?

"A There were two cars, the cars was ready at the top of the hill. The other car behind it was sort of coming down on the grade a little bit.

"THE COURT: Were you on the first or second car?
"THE WITNESS: I was on the back of the first car?

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1	ars Halderman- 404
2	"Q What happened after that?
3	"A Well, I wound the brakes up and
4	"THE COURT: Go slow but speak up so we can all
5	hear you.
6	"A I applied the brakes, wind the brakes up clock-
7	wise d you hear this ratchet sound like click-click and
8	the chain is coming up and the brakes are catching. It
9	comes up and the engine in back of me pushed the cars up.
10	So he is pushing maybe 15, 20 boxcars and the engine back
11	there, maybe two engines I think it could have been a
12	big engine pushing them up and coming together, like.
13	"I always look down before I go off because you
14	are crazy to go off until you check it out.
15	"THE COURT: What did you do?
16	"THE WITNESS: I looked.
17	"THE COURT: Where did you look?
18	"THE WITNESS: Down at the knuckles of the boxcar
19	behind me, the boxcar I was on, the knuckles came together.
20	"Q The coupling device?
21	"A Came together and I heard some screeching of
22	the wheels so I knew the brake was on there.
23	"THE COURT: Don't say that.
24	"Q At this point you were at the top of the hill?

Top of the hill.

"A

. 1	ars Halderman- 405
2	"Q What happened after that?
3	"A The cars came together and I knew I had the
4	brakes so I told the guy down on the ground to release me.
5	"THE COURT: I don't understand what you are
6	saying. What did you do?
7	"THE WITNESS: After I had the brakes wound on
8	real tight and seeing the knuckles come together, I kicked
9	the chain a couple of times to see if it is real firm.
10	"THE COURT: Speak up.
11	"Q The man releases you by a lever device?
12	"A Yes.
13	"Q What did he do?
14	"A He asked me 'Are you all right?'
15	"I said, 'Yes, I am okay.'
16	"THE COURT: Who asked?
17	"THE WITNESS: The man that pulled the cutting
18	lever that cuts you loose from the train. Your two cars
19	loose.
20	"Q The two cars are released from the rest of the
21	train?
22	"A That is right.
23	"Q Did you have any idea that the brake was not
24	working?

"A No.

1	ars Halderman- 406
2	"Q At the time that you were at the top of the
3	hill, did you believe you had brakes on at that time?
4	"A Yes, I did.
5	"Q After the man released the lever what happened
6	to the two cars?
7	"A They began rolling right away because I took the
8	ratchet.
9	"O At that time when the two cars started to roll
10	down the hill, what did you do at that fime as soon as it
11	went over the top of the hill?
12	"A Released the brake lever.
13	"Q What was the purpose or releasing the brake
14	at that time?
15	"A So I can roll, start going.
16	"Q Now, immediately after you released the brake
17	lever, what did you do after that, immediately after that?
18	"A I started, went down the second he pulled the
19	cutting lever.
20	"Q What was the purpose of turning the wheel clock-
21	wise?
22	"A To put the brake on.
23	"Q At that time
24	"A Wind the chain up like that.

Were you standing on the rear of the first car?

Hal	derman.	-
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1	ars Halderman-
2	"A Yes.
3	"Q At that time was the car going down the slove?
4	"A Going down the slope, yes.
5	"Q What happened after you started to turn the
6	wheel clockwise?
7 .	"A I would turn and turned it and you could hear
8	the ratchet, click-click, coming up.
9	"I was turning the brake wheel when I got
10	released going down the hill.
11	"Q As you heard the click-click sound, did you look
12	to see what was happening?
13	"A Yes.
14	"THE COURT: Where did you look?
15	"THE WITNESS: The chain was coming up.
16	"THE COURT: Where did you look?
17	"THE WITNESS: Glanced at the chain.
18	"Q What was happening?
19	"A The chain was coming up.
20	"Q Did you continue to turn the wheel?
21	"A Yes.
22	"Q What happened?
23	A I turned and turned it and it seemed like it
24	didn't didn't seem like I slowed up at all.
25	"Q What did you do?

1	ars Falderman-cross 408
2	"A I was picking up speed.
3	"Q For what distance did you travel along that way
4	from the top of the hill?
5	"A To the bottom.
6	"Q Yes, did you reach the bottom of the hill?
7 .	"A Yes.
8	"Q What happened?
9	"A I continued to turn the wheel.
10	"Q Did the car slow down?
11	"A No."
12	THE COURT: All right, assume that the plaintiff
13	so-and-so on direct examination, at which time the reporter
14	read it.
15	MR. JURON: All right.
16	CROSS FXAMINATION (Continued)
17	BY MR. JURON:
18	Q Mr. Halderman, I want you to assume that you
19	heard the plaintiff testify as the reporter read it to you.
20	Assuming as we would that the testimony as you
21	heard of Mr. Lewis was that as he was going down the hill
00	THE COURTS No. that has already been asked and

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some other track.

stated. You will have to proceed differently. There is

no sense in having it read if you are going to start off on

Halderman-cross

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O Is it possible for the lever to be in a released position and the chain coming up?

No, sir.

Would it be a fair statement to say that if there was the click-click ratchet sound and the chain was coming up, that the brake was in fact in a hold position as Mr. Lewis was going down the hill?

THE COURT: Read that question.

(Question read.)

If the chain was coming up, then it would be in a hold position.

THE COURT: What do you mean by in a hold position?

THE WITNESS: In a locked position and taking up.

That would be the proper position for the lever? 0

That is correct.

That would be the proper position for the lever to permit the brake to be applied?

That is correct.

MR. JURON: Thank you very much.

REDIRECT EXAMINATION

BY MR. HERBERT:

Based upon what you heard read to you as to what Mr. Lewis did from the time he got on the boxcar all the way



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1	ars Halderman-redirect 411
2	MR. HERBERT: That is all I have.
3	RECROSS EXAMINATION
4	BY MR. JURON:
5	O Mr. Halderman, before the luncheon racess you
6	had a chance to discuss this point with Mr. Herbert, did yo
7	not?
8	A I raised the question.
9	O Did you discuss it with him?
10	THE COURT: Just yes or no - wait a minute.
11	O Did you discuss this question and this point
12	with Mr. Herbert?
13	THE COURT: I don't know what the question is.
14	Q Did you discuss the matter of the position of
15	the lever with Mr. Herbert during the recess?
16	A At luncheon I raised the question with Mr.
17	Herbert.
18	O Mr. Halderman, please. If you can answer my
19	question please answer yes or no.
20	A No.
21	O Didn't you sit over here and in court shortly
22	after we adjourned this morning and didn't you describe to
23 .	Mr. Herbert the position of the lever and discuss it with

A I talked to Mr. Herbert this morning.

him right here in court during recess.

A-135 412 Halderman-recross ars 1 About the lever? 2 About the whole hand brake. 3 And you heard in the absence of the jury the 4 very same testimony reread to the jury? 5 That is right. A 3 And after you discussed it with Mr. Herbert 7 again? 8 THE COURT: One question at a time, Counsel. 9 After you heard this very same testimony that 10 was just a few moments ago read by the reporter, you heard 11 it in the absence of the jury and after that didn't you 12 discuss the matter with Mr. Herbert? 13 I don't recall discussing it with him. 14 Except for the fact that you say there was no 15 mention of the position of the lever, there is no question 16 in your mind that the lever would have to be in a hold 17 position in order to hear the click-click ratchet sound and 18 the chain coming up, isn't that a fact? 19 If it was this chain --20 MR. JURON: Thank you very much. 21

MR. HERBERT: Let him finish.

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MR. JURON: That is the answer.

THE WITNESS: No, I didn't. I started to explain it.

> SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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Halderman-recross

MR. JURON: That is a yes or no answer.

THE COURT: No, I don't think he is required to answer yes or no.

Answer it.

THE WITNESS: the chain would not come up with the ratchet in the off position. It is impossible.

mechanically impossible.

O I am saying if he heard this ratchet sound and sees the chain coming up, that brake lever had to be in a hold position, isn't that a fact?

A If the chain is coming up, that is correct.

MR. JURON: Thank you.

THE COURT: I don't understand. Will you explain that?

THE WITNESS: The explanation is counsel said that the chain is coming up, that means to go into the lock position and the chain is wrapping, the hand brake is working.

THE COURT: Doesn't that answer your question?

I think so.

REDIRECT EXAMINATION

BY MR. HERBERT:

reset in order to wind the brakes, and if you turn the

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wheel, the brake wheel, is there any click-click sound?

A You can hear a click, yes.

THE COURT: That is all of this witness?

You are excused.

(Witness excused.)

THE COURT: Do you have another witness?

MR. HERRERT: No further witness but there are

certain things I would like to read from.

THE COURT: Is this a deposition or papers,

exhibits?

MR. HERBERT: A deposition.

THE COURT: What page?

MR. HERBERT. I refer the Court to page 21,

line 3. These are questions which were as and of Mr. Lewis at the examination before trial held in the office of the attorney on February 9, 1973, and which was read and sworn to by plaintiff on March 8, 1973.

THE COURT: I will explain the nature of aw deposition.

A deposition is an examination of a witness, sometimes of a party before trial at which time he is sworn to tell the truth and so forth and the record of the questions and answers is taken down by a reporter and later reduced to a toped copy and the witness or party.

li	A-138
1	ars 415
2	reads it and ordinarily swears to it.
3	Is the original sworn to?
4	MR. HERBERT: Yes, it is, your Honor.
5	THE COURT: All right. If there is any gues-
6	tion about that please ask it now.
7	MR. HERBERT: Line 3:
8	"Q Do you know the identity of the car that
9	you rode down?
10	"MR. JURON: You say does he know the number
11	of the car?
12	"MR. HERBERT: Yes, the number of the car?
13	"A No, I don't know.
14	"O Do you have any record which would refresh
15	your recollection as to what the number of the car was?
16	"A No, I don't."
17	I would like also to read, your Honor, from
18	some exhibits. I would read first from Exhibit No. H
19	which is the personal injury report signed by Mr. Talbott
20	and it indicates that the time of the accident was 2.45 a.m.
21	The date of the accident was October 26, 1969 and the
22	location occurred in A yard in Morrisville, Pennsylvania.
23	(Defendant's Exhibit H read.)

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MR. HERBERT: I would also like to read, your

Honor, from Defendant's Exhibit I in evidence, which is a 25

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car inspection report, personal injury involved.

(Defendant's Fxhibit I read.)

THE COURT: Is that all now?

MR. HERBERT: No, there are several other things.

I would like to read from the Mospital For Joint Diseases, discharge summary.

THE COURT: What page?

MR. HERBERT: Page 3. With respect to an examination of the lower extremities.

"The lower extremities are within normal limits.

The lower extremity shows no evidence of fusion in the left or right knee and no thigh or calf atrophy.

There is no joint instability."

I would like to read from the examination of Mr. Lewis when he was admitted and it is confined to the knees.

Page 4, your Honor:

"Examination indicates that both knees are examined and measured. Examination four inches above the patella showed both knees measuring 15-1/2 inches. They were equal. Examination across the patella at the kneecap, 13-1/2 inches, both equal.

"Examination of both knees four inches below



SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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may have received in this date was solely due to plaintiff's own negligence and his acts in connection with that.

The principal issue, I repeat, under this question of the reference to the brakes is whether or not the brakes were defective as claimed. I charge you that the mere fact that an accident occurred or that the plaintiff may have sustained injuries does not thereby entitle him to a verdict gainst the defendant. Liability follows not from the injury or from the happening of an accident, but from the breach of some duty owed by the defendant to the plaintiff. You may draw no inference solely on the ground that the accident may have happened or that the brakes allegedly didn't work; there must be proof.

In this case -- this is only a general statement -the defendant of course is a corporation. Now, obviously a
corporation can act only through its officers, its employees
or ag ents. Therefore, any act or ommision by an agent or
an employee other than the plaintiff, if done within the
scope of his employment, is held by law to be the act of the
corporation. I think that is understandable.

First, the Federal Safety Appliance Act. The plaintiff here alleges that at the time and place in question that the hand brake on the number one car was defective in that it did not work when the plaintiff attempted to use it

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to slow the two car cut. Plaintiff further alleges that the defendant's hand brakes were the cause of his injury and the consequent damages.

Section 11 of the Federal Safety Appliance Act, I charge you, makes it unlawful for a railroad to haul or use in its line any car not equipped with an efficient hand brake. By efficient hand brakes are meant brakes which act or have the power to act effectively. Inefficient hand brakes are those not producing the desired effect when properly operated.

If you should find from a preponderance of the evidence that the defendant violated the provisions of this section of the Federal Safety Appliance Act, and if the violation played any part in bringing about or actually causing injury to the plaintiff, then the plaintiff is entitled to recover from the defendant such damages as the jury shall find, of course, pursuant to my instructions, as a result of this alleged violation, without the requirement of showing negligence.

You are further instructed that under this Federal Safety Appliance Act that ordinary negligence other than the failure to operate the brakes in a proper way is no defense. The basic question under this Federal Safety Appliance Act is whether or not the brakes were capable of operating efficiently when properly manipulated. That is the basic and principal

question.

On the other hand, we have the Federal Employers

Liability Act provision. In order for a plaintiff to recover

under this Act, he must prove by a fair preponderance of the

credible evidence, first, that the defendant, its agents,

servants or employees, were negligent.

Section, that such negligence was the proximate cause in whole or in part of the injuries sustained by the plaintiff.

In order for the defendant to be found liable for negligence in this respect and under that Act, the Federal Employers Liability Act, the defendant must have had notice, either actual or constructive, of the alleged unsafe condition prior to the time in question. The term "actual notice" means that the defendant or its agents or employees knew of the alleged unsafe condition. The term "constructive notice" means that the alleged unsafe condition existed for sufficient time prior to the happening of the accident and was in such a place that the defendant should have known about the condition.

If you find either actual or constructive notice, then before you find the defendant liable, you must find that the condition complained of was the proximate cause of the accident in question. Let's briefly consider some of these

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should find that the plaintiff was negligent to such an ex
tent that his own conduct was the sole proximate cause of

his injury, then you can not find in favor of the plaintiff

and must render a verdict in favor of the defendant under

the Federal Employers Liability Act.

I now turn to the other doctrine that I mentioned.

Plaintiff alleges here that the menical hand brake did not operate properly and that when he tried to set the brakes they did not take hold and, being afraid, he jumped from the moving car, sustaining injuries.

owing to unexplained reasons as distinguished from a known or explainable particular defective condition, then it is not material that the hand brake performed properly at another time. However, there is evidence in this case as to this issue tending to show that when plaintiff tested the hand brake immediately prior to the accident it performed normally, efficiently and satisfactorily.

There is also evidence that when the brake was inspected afterwards, there was no defect discovered. The law recognizes that evidence of the existence of a particular condition at an earlier time raises some presumption that the same condition continued to exist without change, so long as it is usual for things of that character.

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Similarly, the law also recognizes that evidence of the subsequent existence of a particular condition within a reasonable time supports an inference of the earlier existence of that same condition, especially when the subsequent condition is one which ordinarly could not exist unless it

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had existed at the earlier time.

You must apply these principals to the facts in this case. Then if you believe that the hand brake on this car operated properly and normally and therefore was not defective when tested, before and after the accident, you may presume that the functioning would have continued if it had been tested before and appeared normal and continued normally at the time of plaintiff's accident.

If you believe that the hand brake was found to function 'normally and properly when it was inspected later, then you may infer or conclude if the hand brake operated, it would have operated normally and properly at the time of the accident and, therefore, was not defective.

Now before I turn to the question of damages -of course you get to the damages only if you find liability. I shall explain later the special verdict which I think will be helpful to guide you to the factors and the questions which you have to decide.

Under this Federal Safety Appliance Act liability

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| AR 16

is predicated on a violation of the statue, hich violation proximately causes the alleged injury. In other words, there must be proof by a fair preponderance of the credible evidence, that the brake was defective and so acted at the time of the accident and that that proximately caused the accident in question. Proof of negligence is not required here, and contributory negligence by the plaintiff other than his failure to do so, to properly operate the hand brake, is not a defense in whole or in part.

Now, I turn to a discussion of some of the facts.

Please bear in mind that this is my recollection and that you must depend upon your own recollection or, as I said if you believe that you will be assisted by certain reading of the testimony, and you indicate the area concerned, you may consider that, which, of course, if obviously more accurate.

The plaintiff here testified generally as follows: His birth date is September 17, 1940. On April 25, 1969, he was employed as a car dropper by the defendant railroad. He said that on October 25th, the day before the accident, he came on duty about 11 p.m. and continued working as a car dropper at the Morrisville Pennsylvania Railroad yard, which was a distribution yard, as I believe it was explained.

About 2:30 a.m. on the 26th, he was engaged in releasing two cars which, at that time, were connected with

hospitalized in the New Jersey State Hospital in Trenton.

Plaintiff admitted that at the time of his application for employment with the railroad -- I will mention this later -- he did not answer truthfully certain of the questions posed to him. Specifically, he answered no to questions which would have revealed that he had been hospitalized for a nervous breakdown or mental condition in 1964.

No matter what other effect it may have, if any, this untruthful statement may be considered by you in your determination of the plaintiff's credibility on other testimony which he may have given.

I believe he also indicated that he had made no effort towork or to get work after November 16, 1971.

Dr. Lawrence Kaplan, a psychiatrist, testified on behalf of the plaintiff's claim. He said he became familiar with the plaintiff's hospital record, including the Trenton visit, and that showed him that the plaintiff had been there six months in 1964. It also has his history, employment records and his other situation with respect to nervousness and so forth.

Dr. Kaplan stated that in his opinion the plaintiff at the time he first examined him was suffering from a schizophrenic disorder of long duration; that in this type of condition, the plaintiff was insecure, anxious and con-



a complete statement from the record of the plaintiff's direct testimony with regard to the happening of the accident and so you have heard both the direct testimony as given you and you heard a reading of it.

Halderman identified the inspection report which he said had been made by W. F. Campbell, now employed by another railroad in Virginia, and another inspector Zicharo, who has died. Obviously, the railroad cannot produce individuals who have passed away. It may be difficult to get the service of subpoenas on the individual in Virginia; I don't say that it is.

must be placed in order to have the brake operated. And after being questioned on the assumption of facts stated by the plaintiff in his direct case, he stated that in his common the plaintiff had not operated the lever properly at the time of the accident and it was not on the proper side in order to permit the operation of the brakes.

I read to you from the record some of the further examination of Mr. Halderman. I believe these questions were by Mr. Juron.

"Q Is it possible for the lever to be in a release position and the chain to come up?

"" No, sir.



the New Jersey State Hospital record and particularly a slip over page 6 which indicates something about the history which the patient or his mother gave at the time of the hospitalization; something further in some of these about their conclusion. You may examine that.

You have the report or exhibit F which you may attempt to read, depending upon the handwriting of the doctors and nurses.

You have from the defendant this application for employment and there is a second section, I believe Exhibit C, on the health examination. The questions are printed and then the answers are apparently indicated by a yes or a no. It is on the last page. I am afraid I shall have to let some person with better eye-sight than I to look at that.

There is an exhibit H of the defendant, it appears to be a report of the accident by Trainmaster Talbott. He was the day trainmaster, and another night trainmaster, and with respect to these exhibits, they were admitted under a section of the Federal Code, 1732, which in substance provides that a record made in the regular course of business, where it is the regular course of business to keep the records, are admissible. They may be attacked for whatever infirmities may appear, but there is some degree of apparent regularity

about them. The effects of these are for you to determine.

There is the record of inspection and there is the record of the Hospital for Joint Diseases, and so forth, with respect to the hospitalization when the operation by Dr. Burton was performed.

I am handing to you a special verdict and I will ask the clerk to give the forelady the orginal copy of this special verdict and to give one copy to each of the other five jurors. The alternate will not need one. I will go over it somewhat briefly with you.

The first two or three questions relate to the liability under the Federal Safety Appliance Act. If the answer is no to this question, that ends any requirement to go further. If the answer is yes you omit questions two and three and four as stated here and go on to the special verdict with respect to damages.

The second question applies to the liability under the Federal Employers Liability Act and relates to whether or not the plaintiff has proved that this accident was caused in effect by defendant's negligence, and if you get to yes on that, you must go on to question three, because there is a possible effect of a defense of contributory negligence. You will go on with the next two or three questions.

Then particular damages are referred to in Part Two,



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(The following took place in the robing room.)

THE COURT: Do you have any exceptions?

MR. HERBERT: Yes, I do have exceptions, your

THE COURT: All right, I will hear from Mr.

Juron for the plaintiff first.

MR. JURON: I respectfully except to your Honor's charge which states in substance that the jury may only consider plaintiff's injuries which the defendant could have foreseen. I believe the charge should be that the defendant is liable for all injuries that are causally connected to the violation of the Federal Safety Appliance Act or the Federal Employees Liability Act as the case may be, even though those are injuries which the defendant could not have foreseen.

I respectfully except to your Honor's charge with respect to the fact that they may consider on the question of a violation of the Federal Safety Appliance Act that the brakes may have operated properly either before or after the accident. In this connection I respectfully refer to --

THE COURT: I hope you got a citation.

MR. JURON: Just give me a moment, please.

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The citation of that is the Texas & Pacific Railway against Griffith, 265 Fed. 409 and that was one of the two supplemental charges which I submitted to the Court.

THE COURT: I have one other case you submitted, the only one I passed upon late today before you summed up was given without a page or volume. I hope this is correct.

Go ahead.

MR. JURON: I respectfully except, your Honor, to the charge that they may consider on the question of the credibility of the plaintiff the fact that there was an untruthful statement made in an application for a position in April of 1969.

THE COURT: That is noted. Is that all?

MR. JURON: I don't think that should be considered by the jury.

THE COURT: I said that could be considered in connection with credibility, that is all I said. It means nothing unless you state some kind of reason for it to means

MR. JURON: I respectfully except to your

Honor's version of the testimony of Dr. Kaplan that

plaintiff can work at any job except that as car dropper

or trainman. My recollection is that Dr. Kaplan testified

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mitigation of damages is upon the defendant. I did not charge that exactly by any means.

What the court did charge and I have consulted with the reporter and obtained from his record what I said and what the court charged was as follows:

"Moreover, when you assess damages, there is a general rule of law shich you must consider and that is the duty of every person, every plaintiff, who is suing to recever damages which he claims caused by another, to yield to a legal duty to keep all those damages down to a reasonable minimum. This is knew in law as mitigation of damages. The burden of proving that the plaintiff could have reduced or mitigated damages is upon the defendant. This, however, does not alter the fact that the plaintiff must bear the burden in the first instance of proving his damages by a fair preponderance of the credible evidence and plaintiff, as I said a moment agok must establish the nature, extent and effect of the damges which he claims."

Mr. Herbert also objected to the court's charging the jury that proof of plaintiff's failure to properly operate the hand brake is no defense to a violation of the Federal Safety Appliance Act.

You recall, I think, that I charged that in order to establish a violation of the Act and what it meant was the

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failure of the applaince to operate correctly when properly operated. What the court said in substance was as follows:

"Under this Federal Safety Appliance Act liability is predicated on a violation of the statue, which violation proximately causes the alleged injury. In other words, there must be proof by a fair preponderance of the credible evidence, that the brake was defective and so acted at the time of the accident and that that proximately caused the accident in question. Proof of negligence is not required here, and contributory negligence by the plaintiff other than his failure to do so, to properly operate the hand brake, is not a defence in whole or in part."

That means that there is no error on that.

I come now to Mr. Juron's objections.

He objected, in any event, to the effect that the defendant is only liable for injuries which are foreseeable. The charge as shown by the record which I have obtained, however, was as follows:

"The defendant is charged with the knowledge of what a reasonable prudent person would have foreseen and it is negligent if it failed to use the care necessary to avoid dangers which should have been reasonably anticiated, but it is not under any duty, I charge you, to anticipate what a reasonably prudent person would not have anticipated, nor is

it chargeable with negligence in failing to provide against dangers which such a person would not have foreseen or against injury which could not have been foreseen."

As I stated, it applies solely in connection with the compalint upon FELA and does not relate to the claim of the Federal Safety Appliance Act.

Mr. Juron also objected to the court's use of the term "a proximate cause", stateing that the court should have stated a contributing cause. However, the court said more than that. The charge referred to any proximate cause in whole or in part of the accident. There is no error there, as I see it.

He objected to the charge in so far as the court stated that the evidence of untruthfull answers at the time of the physical examination may be considered in connection with the credibility of the plaintiff. I have no reason to believe that is error.

He also objected to the instruction in the charge that there could be a presumption of a continuation of a pre-existing condition; also that there could be an inference of the prior existence of the condition based upon evidence of the subsequent condition within a reasonable time after the accident.

I believe that the charge as I gave it is correct

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and is substantiated by the decisions.

About Dr. Burton's testimony, I will make a correction on that. In my summary -- this is what I will say in substance to the jury -- in my summary of my recollection of Dr. Burton's testimony, I stated in part that the plaintiff made a satisfactory recovery by November 16, 1971, that his condition was good, with no substantial permanent effects.

I have had called to my attention a later statement was made in a latter of January 11, 1972 in which Dr. Burton conceded he sent to Dr. Feinberg, the railroad doctor.

Accordingly, I will make that correction.

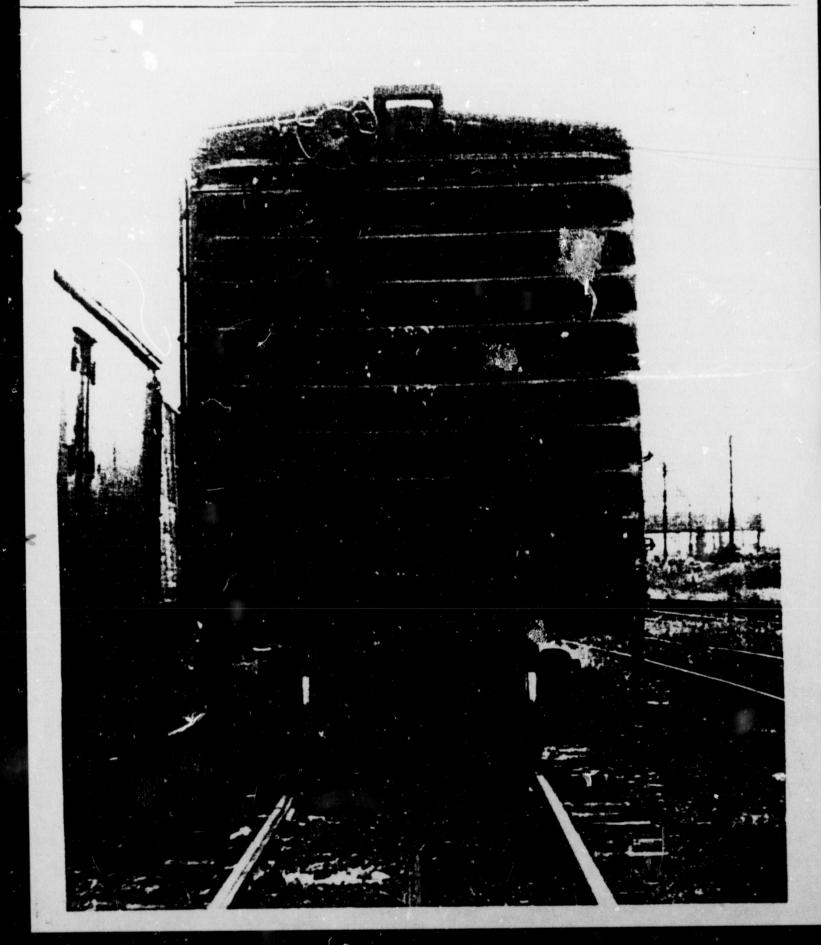
He also objected to the court's version of the facts as testified to by Dr. Kaplan, in which the court said Dr. Kaplan testified that the plaintiff could work at any job except as a railroad brakeman.

I will correct that because I am informed from the record that what Dr. Kaplan did say was that plaintiff could work at any job not requiring stress.

Now, as to the exhibits, of course, I want to ask you this: Will each of you stipulate that the court give to the jury all the exhibits in the beginning?

MR. HERBERT: I have no objection.

MR. JURON: No, sir.



DEFENDANTS' EXHIBIT A - APPLICATION FOR EMPLOYMENT

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A-158

DEFENDANTS' EXHIBIT A - APPLICATION FOR EMPLOYMENT

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HAVE YOU EVER UNDERSORE A SURGICAL OPERATION?	YES	×0 ⊠
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HAVE YOU EVER BEEN UNABLE TO HOLE A JOB OR BEEN REFUSED ONE BECAUSE OF MEDICAL REASONS?	YES	NO
HAVE YOU EVER BEEN REJECTED FOR U.S. MILITARY SERVICE BECAUSE OF MEDICAL REASONS?	YES	₩0 □
HAVE YOU EVER BEEN REFUSED LIFE INSURANCE OR ASKED TO PAY A HIGHER THAN NORMAL PREMIUM?	YES	NO M
HAVE YOU EVER RECEIVED, CLAIMED, OR APPLIED FOR A PENSION, COMPENSATION, OR SETTLEMENT, BECAUSE OF AN INJURY, ILLNESS OR DISABILITY? IF YOU ANSWER YES, BE SURE TO NAME COMPANY OR PERSON AGAINST WHOM CLAIM WAS MADE AND THE AMOUNT OF COMPENSATION RECEIVED.	YES	₩°

A-159

DEFENDANTS' EXHIBIT A - APPLICATION FOR EMPLOYMENT

	Page 3
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CERTIFICATION

I hereby certify that all questions in this employment application have been answered correctly, and authorize my former employers and any other person or organization to give the Pennsylvania Railroad Company all the information they may have as to my personal character and also my physical, mental and moral qualifications for the position I have applied for and the reason I was discharged or quit service, upon any inquiry that may be made upon them.

I further authorize and specifically request the Veterans Administration, its officers, doctors and hospitals to furnish all records, reports, medical examinations and findings, X-rays and all other information of every nature which it or they may have relating to my mental and physical condition to the Fennsylvania Railroad Company upon the presentation of this authorization, or a photostatic copy thereof.

ilness	OCCUPATIO	A	APPLICANT'S FULL SIGNATURE	(IN INK)	t .	DATE
	DO NOT WRITE I	N SPACE BEI	OW - FOR INTERVIEW	ER ONLY		
TERVIEWER'S COMMENTS AND RECOMMENDATIO	NG:			-21/	1111	1.17 11.
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DEFENDANTS' EXHIBIT C - REPORT OF HEALTH EXAMINATION

REPORT OF HEALTH EXAMINATION MEDICAL DEPARTMENT—PENNSYLVANIA RAILROAD

MD 2 R3

Lest Name—F	First Name—Missie Name ewis, Clifford	Jeseph		32 84		Employe Numb	cr.	3. Date of E	25-69 /	0:30A
Address: Street	Hanilton Ave.,	Trentan N.J.					5. Telephor	193-645	1	
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Penodic		ragnostic Return from Fu	urlough 🗌		Other (Specify):		a Damosal		
i. Name and Add	tress of Personal Physician						o receive copy o			
3. Oragnoses						Re-		If new diagno	osis, indicate ce leading to it	
Int, Class, Code		Name of Disease or Defect		Diag- nosis	Symp- tomatic	quiring Treat- ment	Com- pleted by Examinee	History Obtained by Examiner	Physical Exami- nation	Lab- oratory Test(s)
				New 🗌	Yes 🗌	Yes 🗌				
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a. Which he		tion for the work alified Mot Qualified alified Not Qualified Not Qualified	C. Deci	sion deferred pend	ling review:	3				*
28. Reviewer's c	comments if review requested:		/			/		, D		
				Date: C	1/25	16.9 Init	als: H	tilit	1.	
79. Results of ex	xamination were made known were not	to examinee. 30. Visit to p	personal physicia	-	dvised.		Re-examination	besivite n		
			33. Signat	ture of examining (physician	17/5	who	ce	mo.	1
			Street	and number of PR	IR medical unit	1.1	00 6	1,1	1H	1.11
			City	and State		~	Dun	l-		
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DEFENDANTS' EXHIBIT C - REPORT OF HEALTH EXAMINATION

		h, hesband, or any blood relation ever had: Relations			Age of father if alive 74	Age at death if dead
-					Age of mother if alive	Age at death if dead
-		oberculosis			indicate if you have been married more	than once Yes No
+		ancer			Number of your children flying	Number of your children dead
-		eart trouble				
-	-	igh Blood Pressure			How many brothers and sisters did you	have who lived to be at least one year of age?
	-	pileosy Fits				
_		av Fever, Asthma, or Hives			How many of these were older than you	NONG.
_		ental lliness				
Have	ACCUPANT OF THE PARTY OF	er had, or during the p year have you had:				
-	Yes		Yes	No	Check each	Yes No Check each
T	-	Tuh-raufosis		X	Chronic Cough	Convilsions, Fits, Spells, or Epilepsy
T		Contact with Anyone with Tuberculosis		· ·	Shortness of Breath	Neuritis or Neuralgia
T		A Rheumatic Fever or Rheumatism		1	Heart Trouble or Murmur	Numbness, Weakness, or Paralysis
T		X Mataria		17	Pain or Pressure in or about Chest	Restlessness or Irritability
1		Venereal Disease		X	Palpitation or Pounding Heart	Excessive Norry or Depression
		Lump, Growth, Tumor, Cyst, or Cancer		1.	High or Low Blood Pressure	Any Change in Your Sleeping Habits
I		X Rupture or Hernia		1	Cramps in the Legs	Loss of Memory
Ī		1 Broken or Fractured Bones		1	Swelling of Ankles or Feet	Difficulty Concentrating
1		Car, Train, Air, or Sea Sickness		1	Spitting Coughing or Vomiting of Blood	Any Unusual Fears
1		III Effects from Medicine or Serum		X	Stiff, Swollen, or Painful Joints or Muscles	Any Problems with Sex
1		Headaches, Fainting, or Dizziness		1	Trouble with Shoulder or Elbow	Any Medicine or Drug Habit
1		Excessive Bleeding at any Time		11	Trouble with Hip or Knee	Excessive Drinking as a Problem
		Are You a Bieeder?		LX	Back Trouble, Lumbago, or Sciatica	
		Hay Fever, Asthma, or Hives		1	Foot Trouble	FEMALES ONLY. Have you ever:
		Chills, Fever, or Night Sweats		IX	Stomach, Liver, or Intestinal Trouble	Been Pregnant
1		Skin Trouble, Rash, or Boils		1	Indigestion or Heartburn	Had a Vaginal Discharge or Spotting
		Excessive Thirst or Hunger		X	Gail Bladder Trouble or Ulcers	Been Treated for a Female Disorder
		Recent Gain or Loss of Weight		İ	Jaundice or Yellow Skin or Eyes	Had Painful Menstruation
		Reakness of Fatigue		1	Loss of Appetite, Nausea, or Vomiting	Had Irregular Menstruation
		Need to Wear Eye Glasses		1	Difficulty in Swallowing	Had Hot Flashes
		* Inflamed or Painful Eye			Abdominal Pain, Cramps, or Burning	Complete the Following:
		Blurring, Double Vision, or Blindness			Change in Bowel Habits	Age at Onset of Menstruation:years
		Frequent Colds or Sinus Trouble		V	Constipation or Diarrhes	Interval between Periods:days
		Running Ears or Difficulty in Hearing		13	Blood in Bowel Movements or Black Stools	Duration of Periods:days
		Ringing or Buzzing in the Ears		1	Piles or Rectal Trouble-	Date of Last Period:
		Trouble with Mouth, Gums, or Tongue			Trouble Holding, Starting or Stopping Urine	Amount of Flow: Hormal Excessive Scanty
		Hoarseness		1	To Pass Urine More Than Once Nightly	
				11	Burning or Frequency in Passing Urine	
					Sugar, Albumin, Blood or Pus in Urina	
+	-	37. Have you ever had any illness or injury other than those already. Have you been examined or treated by any doctor or other process. Have you ever been a patient in a hospital, institution, or such as a second of the process.	schitioner w	rithin t		
	-	40. Have you ever had or been advised to have My operation?			.7	
	L;	41. Have you ever had any injury on duty which caused you to li	ose time in	Me won		
. KH	sory and	wer the following questions as indicated:				
Land	cate 8	we highest level of schooling completed: Years grammar school	X yr	12	Years high school Years college	
		No. A. Farra Marine Come of Carri	Cuard?	Yes	X No []	
~4	ME YOU	ever served in the Army, Navy, Air Force, Marine Corps, or Carri	,		A	
Ka	we you	ever been rejected for Military service? Yes	A			
		the state of the s	7 ~~			
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Ar	e you to	iking any medicine? Yes 🗀 No 💢				
	IG HAE	NTS Yes No				
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	-	ore cigarettes daily (or equivalent) For less than 10 years 🖸				
	79 or m	ore cigarettes daily for equivalent) For less than 10 years 9 years More than 20 years				

DEFENDANTS' EXHIBIT C - REPORT OF HEALTH EXAMINATION

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	79.	It it is felt that an	y of the following a	onstitute	(s) a source	CB														
		of appreciable stre	ess for the examines	e, please	so indicat	,														
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A-163

DEFENDANTS' EXHIBIT C - REPORT OF HEALTH EXAMINATION

44. Special Project Report
45. Physician's summary and elaboration of all positive and pertinent data, with personal, military, and occupational history, and history of present illness, if any. (Note: Please enlarge on exposure to any of the following in any previous
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DEFENDANT'S EXHIBIT H - PERSONAL INJURY REPORT

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DEFENDANTS EXHIBIT I - CAR INSPECTION REPORT

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PASSENGER CARS	LOCATION	OF STEP TREADS	WHEEL NO.	KIND		CONDITION	
	LOCATION OF PLATFORM WHEE		WHEEL NO.	KIND		CONDITION	
	LOCATION	OF TRAP DOOR	WHEEL NO.	KIND		CONDITION	
	FOOT	WHEEL NO	LOCATION		CONDITION		
	HOUSING .	WHEEL NO.	CONDITION		BUFFER FACE PLATE	WHEEL NO. C	ONDITION
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MEMORANDUM AND ORDER OF LEVET, D. J.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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CLIFFORD J. LEWIS, JK.,

Plaintiff,

-against-

71 Civil 2339

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., WILLIAM WIRTZ, AS TRUSTEES IN REORGANIZATION OF THE PROPERTIES OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR IN REORGANIZATION,

MEMORAHDUM and GRUER

Defendants.

LEVET, D. J.

In the above-entitled case the jury rendered a verdict for the defendant-railroad and I directed judgment accordingly.

Plaintiff's counsel orally moved to set aside this verdict and asked leave to file a memorandum thereon within ten days. The said ten days have passed and I am informed by plaintiff's counsel that he will not file any such memorandum.

Consequently I am compelled, and do, deny the motion for a new trial as there was adequate proof to sustain the verdict.

At the time of the oral motion I instructed the clerk to withhold entry of judgment. I now direct the clerk to enter

A-167

MEMORANDUM AND ORDER OF LEVET, D. J.

judgment for the defendant-railroad together with costs.

So ordered.

Dated: New York, N.Y.

January 27, 1975.

(SGD) RICHARD H. LEVET

United States District Judge

JUDGMENT APPEALED FROM

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CLIFFORD J. LEWIS, JR.

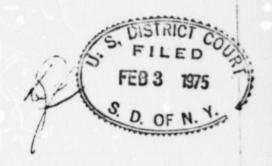
Plaintiff

:

-against-

GEORGE P. BLALK, RICHARD C. BOND, JERVIS LANGDOM, JR., WILLIAM WIRTZ, as: Trustees in Reorganization of the properties of PEN CLATRAL TRANSPORTATION JOHNAM, Debtor in Reorganization:

Defendants



71 Civil 2339 (RHL)

JUDGIAENT

The issues in the above entitled action having been brought on regularly for trial before the honorable Richard H. Levet, United States District Judge, and a jury, on January 2,6,7,0,9 and 10,1975, and the Court naving submitted the attached special questions to the jury, and the jury naving answered the said special questions, and the jury having returned a verdict in favor of defendants and the Court naving reserved its decision on plaintinf's oral motion to set aside the verdict, and the Jourt thereafter on January 27, 1975, naving handed down its memorandum denying the plaintiff's motion and directing the Clerk to enter jungment in favor of defendants,

it is,

ALTHAM, A.J. MAND and DEDRAM: Inst defendants GEORGE P. BAKER, ALTHAM O. 1970, July D. Marie D., July WILLIAM WIRTZ, as Trustees in Representation of the properties of PENN C. MEMAL TRANSPORTATION Comman, Deptor in Reorganization, have judgment against the plaintiff Chief and C. Lawle, J.A., dismissing the action, with costs to be taxed.

Dates: New York, N.Y. Harary 31, 1975

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NOTICE OF APPEAL

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CELLENS CHAMBERS STATIONERS SO WEST BHOADWAY (8)

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#2803

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CLIFFORD J. LEWIS, JR.,

NOTICE OF APPEAL

Plaintiff,

71 Civil 2339 (RHL)

-against -

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., WILLIAM WIRTZ, as Trustees in Reorganization of the Properties of PENN CENTRAL TRANSPOR-TATION COMPANY, Debtor in Reorganization,

Defendants.

NOTICE IS HEREBY GIVEN THAT Clifford J. Lewis, Jr.,
Plaintiff above named, hereby appeals to the United States
Court of Appeals for the Second Circuit from the final judgment
which was entered in this action on February 3, 1975.

Dated: New York, New York February 13, 1975

JURON and MINZNER P.C.

aller is.

Albert A. Juron

Attorney for Plaintiff 501 Fifth Avenue

New York, New York

10017

(21?) 697-8484

TO: ROBERT M. PEFT, ESQ.
Attorney for Defendants
466 Leyington Wedue
New York, New York 10017

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By Clerk



Beggived capty of the within
Coppendix July 1975.

Sign A.D. Deel

For: Color M. Feet Esq(8).

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